

No. 34550-1

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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

**LEWIS COUNTY,
Appellant and Cross-Respondent,**

v.

**MICHAEL T. VINATIERI, et al.,
Respondents and Cross Appellants,**

**WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,
Agency Respondent**

**RESPONDENT RESPONSE BRIEF AND
OPENING BRIEF ON CROSS APPEAL**

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I. INTRODUCTION

This is an appeal from the Decision (Vol. 1 CP 108-125) of the Lewis County Superior Court entered by the Honorable H. John Hall on January 31, 2006, reconsideration denied February 24, 2006. This matter reviewed a decision of the Western Washington Growth Management Hearing Board (“Growth Board”) entered May 6, 2004 (Vol 4 CP 484-536), reconsideration denied May 27, 2004 (Vol. 4 CP 537-538), entitled Michael Vinatieri, Edward G. Smethers and Karen Knutsen et al. v. Lewis County No. 03-2-0020c. The Decision found that the Growth Board erred in entering its Finding of Fact No. 19 and Conclusion of Law No. G and finding Resolution 03-368 and Ordinance 1179E complied with notice provisions of the Growth Management Act (“GMA”). The Decision reversed the findings as to the Abplanalp rezone at p. 12 (Vol. 1 CP 119) and as to Resolution 03-368 and Ordinance 1179 E at p.14 (Vol. 1 CP 121). The County appealed the Decision and Respondents Michael T. Vinatieri, Eugene Butler, Richard Roth, Susan Roth and Deanna Zieske cross-appealed (Vol. 1 CP 1-4).

The Respondents and Cross-appellants in this proceeding have been known as Petitioners in all proceedings below and are collectively referred to herein as “Petitioners”. We refer to the Appellants as the

“County,” the Board of County Commissioners as “BOCC” and the Planning Commission as “PC.”

Petitioners support the Decision finding that the notice provided by the County is inadequate and cross-appeal as stated below.

II. APPELLANT’S ASSIGNMENTS OF ERROR WITH ISSUES ASSOCIATED WITH THESE ASSIGNMENTS OF ERROR AND RESPONDENT-CROSS APPELLANTS’ ASSIGNMENTS OF ERROR WITH ISSUES ASSOCIATED WITH THESE ASSIGNMENTS OF ERROR

Petitioners frame the County’s assignments of error, and will address them in the order presented in this brief.

1. Whether the trial court erred in holding the Growth Board erred when the Growth Board found the Board of County Commissioners (BOCC could make comprehensive plan map amendments and development regulation map amendments without following the County’s adopted procedures?

Issue: Whether the BOCC, in considering the PC’s recommended designations of agricultural lands of long-term commercial significance, may take final action to exclude land that was proposed for exclusion for the first time at the BOCC’s final hearing without input from the Planning Commission, County staff or the public (the Abplanalp issue).

2. Whether the trial court erred in reversing the decision of the Growth Board and holding the adoption of a comprehensive plan

amendment concerning acres to be designated and development regulations about farm homes and farm centers to be noncompliant for failure to comply with notice procedures required by RCW 36.70A.035(2)(a).

Issue: Whether the recommendation of a Planning Commission must be an explicit recommendation of proposed amendments and whether the BOCC may materially change the Planning Commission recommendation so as to amend the comprehensive plan and/or a development regulation after the Planning Commission recommendation had been made, both without a draft of the proposed BOCC changes available at the time of issuance of the notice of the BOCC hearing.

Issue: Whether the trial court erred in reversing the decision of the Growth Board when the Growth Board failed to find inadequate public notice when the notice materially did not comply with the requirements of law.

Petitioners, as cross-appellants assign the following error:

1. The Growth Board and/or the Trial Court erred in declining to hold portions of enactments amending a comprehensive plan and development regulations void when those portions contained material changes about which the public had no notice.

Issue: Whether the action of the BOCC, after the public had been advised a matter was not on the agenda, nevertheless making changes to the zoning map based on testimony heard for the first time at the BOCC's hearing held only moments before it took final action constitutes a manifest abuse of discretion and/or a deprivation of the right of the public to procedural due process such that the changes are void.

Issue: Whether the actions of the BOCC enacting material changes to the Comprehensive Plan and Development Regulations without providing any notice at all of the material changes and/or without substantially providing the notice required under applicable statute and county ordinances constitutes a manifest abuse of discretion and/or a violation of procedural due process such that the changes are void.

III. COUNTER STATEMENT OF THE CASE

The County's statement of the case omits certain relevant facts and mis-states others. This response corrects those errors and omissions and states facts pertinent to Petitioners' cross-appeal. Petitioners cross-appeal that portion of the Decision declining to find Lewis County Resolution 03-368 and Ordinance 1179E or portions thereof void for a manifest abuse of discretion and failure to provide procedural due process.¹

¹ The Administrative Record (AR) comprised of briefing and exhibits (the "XII" documents) to the Growth Board, includes a shared record with Lewis County Superior Court No. 04-2-00477-1, appealed to the Supreme Court under No. 76553-7, wherein the

Petitioners are citizens and taxpayers of Lewis County, who participated orally and/or in writing before the Planning Commission and Board of County Commissioners in the enactment proceedings and include persons owning land devoted to agriculture in Lewis County who are adversely affected by the challenged enactments.

Lewis County is a non-charter County. As such it has those powers expressly delegated to it or necessarily implied from the delegation. *Mount Spokane Skiing Corp. v. Spokane County, et al.*, 86 Wn. App. 165, 177, 936 P.2d 1148 (1997). Legislative authority for such a county is vested in a Board of County Commissioners. The County created a Planning Department and Planning Commission under authority of the Planning Enabling Act, Ch. 36.70 RCW and RCW 36.70.040, which Department and Commission functioned at all times pertinent hereto. (See LCC 2.10.020(1). attached)²

Lewis County Code section 2.10.030(7) provides that the powers and duties of the Planning Commission are as “prescribed in Chapter 36.70 RCW, as amended, and other applicable laws of the state”. On July 1, 1993, as a result of rapid population growth, Lewis County became

Court made its ruling on August 10, 2006. The administrative record is now in the possession of the Lewis County Clerk on the related Matter, *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 139 P.3d 1096 (2006) and is in the process of being readied for forwarding.

² This ordinance was superseded in 2005 by Ch. 2.11 LCC. It contains provisions substantially similar to LCC 2.10.020(1) and 2.10.030(7).

subject to the goals and requirements of the GMA, Ch. 36.70A. RCW, as well, and now must make planning and zoning decisions that conform to both the GMA and the Planning Enabling Act (Chapter 36.70 RCW).

Boards of County Commissioners and Planning Agencies must keep records of their proceedings. (See RCW 36.32.110 and 36.70.140.) The BOCC and the PC are subject to the requirements of Ch. 42.30 RCW, the Open Public Meetings Act. Under its provisions, all acts pertinent hereto of the BOCC and of the PC are required to be conducted at meetings that are open to the public.

On June 30, 2000, the Growth Board found that the County's designation of only 11,835 acres of Agricultural Resource Lands was not guided by the minimum guidelines and failed to comply with the GMA. WWGMHB No. 99-2-0027c, FDO, 6-30-00. It found also that the failure of the County to reveal where any Class B Agricultural Resource Lands were located did not comply with the Act. *Id.* In its order dated March 5, 2001 the Growth Board found that many of the development regulations pertaining to agriculture were noncompliant and/or invalid. WWGMHB, No. 99-2-0027c and 00-2-0031c, FDO/Compliance Order, 3-5-01. In a compliance order dated July 10, 2002, the Growth Board again found that the County had not complied with requirements for agricultural resource land designation and protection.

The County enacted several pieces of legislation in the year 2003 to address these prior findings of noncompliance. On May 12, 2003, the County enacted Ordinance 1179 B, in part addressing resource land definitions and on June 2, 2003 it enacted Ordinance 1179 C addressing resource land development regulations (Tab 30 AR 330-387). On September 8, 2003, the County enacted Resolution 03-368 amending the Comprehensive Plan (Ex. XII-44b Tab 30 AR 583-584) and Ordinance 1179E amending development regulations (Ex. XII-44a Tab 30 AR 676-677).³

In addition to the procedures of the Planning Enabling Act incorporated by reference into the Lewis County Code (LCC 2.10.020(1)), the County enacted public participation procedures under Ch. 17.12 LCC. The Ch. 17.12 procedures apply to amendments to both the Comprehensive Plan and development regulations. These procedures require that a draft proposal be prepared and that the Planning Commission hold a hearing on the draft proposal. LCC 17.12.050(2)(a). The draft proposal is required to be “available to the public at least 15

³ The XII- exhibits are documents presented before the Planning Commission and Board of County Commissioners. The index to this record is at Tab 35 AR 764-789. Nearly all of the exhibits used by the parties accompanied their opening briefs. The Petitioners opening brief is at Tab 42 AR 846-900 and the County’s response brief is at Tab 51 AR 860-1020. The Growth Board did not copy these documents, but instead placed them in separate rubber banded packets in numerical order. These packets are identified with a tab number to indicate which brief each accompanies. As further identification, petitioner’s exhibits are separated by goldenrod separator sheets and the County’s exhibits are separated by blue sheets.

days prior to the scheduled hearings.” LCC 17.12.050(2)(b). After the public hearing the Planning Commission is charged with making its recommendations. (LCC 17.12.050(2)(i). The Board of County Commissioners is then required to “publish a notice of public hearing on the materials directed by the Planning Commission.” LCC 17.12.050(3)(a).

As to the content of the required notice, RCW 36.70A.035(1) provides that the notice must be “of proposed amendments to comprehensive plans and development regulations;” and RCW 36.70.390 and -.590 provide that the notice must be of the “date, time and purpose” of the hearing.

Prior to the enactment of Ordinance 1179 E the County had enacted several development regulation text amendments to Ch. 17.30 of the Lewis County Code pertaining to resource lands. On June 2, 2003 the BOCC enacted Ordinance 1179 C adopting those development regulation recommendations. (Compliance Report attachment 3, June 30, 2003, Tab 30 AR 330-387). The purpose of the enactment was to bring Agricultural Resource Land development regulations into compliance.

The Planning Commission then prepared proposals for ARL designations and held hearings on a draft proposal on May 29, 2003. (Ex. XII-34 g, referenced at County Resp. Br. Appendix 1 Vol.2 CP 266, copy

among exhibits accompanying Co. Compliance Br. Tab 51, AR 860-1020).

On June 10, 2003, the PC by written motion requested that staff prepare a “technical report to supplement the compliance work for agricultural resource land done by the Planning Commission over the last 9 months.” (Ex. XII-37f, p. 3, Vol. 2 CP 266; copy of Ex. XII-37f is at Tab 51; copy of the written motion is Ex. XII-37p at Tab 42 AR attached). The PC thereafter made its agricultural resource land designation recommendations to the BOCC on July 22, 2003 (Ex. XII-40d p. 3, Vol. 2 CP 266; copy at Tab 42 AR) and on the next day transmitted its recommendations to the Board of County Commissioners for the purpose of conducting a hearing on the recommendations as authorized by LCC 17.12.050(3)(a). (Ex. XII-40 k, attached is the actual transmittal authorized at Ex. XII-40d, copy at Tab 42 AR attached).

The BOCC did not conduct a hearing on the July 22 recommendations. Instead, the BOCC, by letter to the PC dated August 8, 2003, acknowledged receipt of the PC recommendations, but based on the technical report prepared by staff,⁴ initiated a request consistent with RCW 36.70.430 and -.640 that the PC consider an alternate set of

⁴ This report is entitled “Agriculture in Lewis County A preliminary report to the Lewis County Planning Commission for Purposes of Public Hearing” (Ex. XII-41h, copy at CP 379-396, also at Tab 42 and Tab 51 AR.)

designation recommendations for consideration by the BOCC. (Ex. XII-41f, minutes of the 8-12-03 meeting Vol. 2 CP 266; the minutes cite the actual letter Ex. XII-41g, copy at Tab 42 and at Tab 51 AR attached). The report included some analysis and at p. 15, recommendations not in draft form, about “farm homes” and “farm centers” on parcels of 40 acres or larger. (Ex. XII-41h, Vol. 3 CP 379-396.) The County also included some recommendations in the form of proposed maps for designation of agricultural resource lands (Ex. XII-41j⁵, attached, identified in August 12, 2003 meeting notes p. 1 at Ex. XII-41f Vol. 2 CP 266, Tab 42 AR). The PC responded by scheduling a hearing to consider the previously made PC recommendations together with the new set compiled by staff and initiated by the BOCC. (Ex. XII-41f Vol. 2 CP 266, copy at Tab 51 AR attached).

The PC held its hearing on August 26, 2003. That hearing resulted in recommendations readopting its July 22 recommendation in part and adopting the August 12 BOCC recommendation in part. (Ex. XII-42h, copy at Vol. 3 CP 401-405). The recommendations also included a recommendation to add a “farm home” designation and a “farm center” recommendation, by a simple check mark and not in draft form. (Ex. XII-42p, copy at Vol. 3 CP 422-426, AR 672-675 attached). Consistent with LCC 17.12.050(3) those recommendations of the PC were transmitted to

⁵ Ex. XII-41j is not in numerical order among Tab 42 exhibits. Instead, it resides with other 11” x 17” maps on top of the numbered exhibits in the Tab 42 packet.

the BOCC for hearing. A notice of hearing was published in the County's legal newspaper. The notice was in general form and stated:

The hearing will be for the purpose of taking testimony concerning proposed amendments to the Comprehensive Plan and zoning regulations, designating agricultural land of long-term commercial significance. Those wishing to testify concerning this matter should attend.

A complete copy of the proposed amendments is available for review at no cost at Lewis County Community Development Department ...

The notice did not set out the text and maps of the PC recommendations or summarize them. The notice did not set out the text or maps of proposed changes to the PC recommendations or summarize them. It did not advise citizens there might be changes to the PC recommendations in the offing. (Ex. XII-43, copy at Vol. 3 CP 428 attached).

The County has offered no record of a meeting of the Board of County Commissioners to recommend a change to the proposed "official controls" or of a motion to initiate a change to the comprehensive plan beyond those changes proposed by the PC.

On September 8, 2003, following a hearing on the PC recommendations, the BOCC adopted Resolution 03-368 and Ordinance 1179 E. (Ex. XII-44a and 44b, copy at Vol. 3 CP 460-461, 468-469; Tab 30 AR 583-584, 676-677). Resolution 03-368 changed the

recommendations of the Planning Commission to add an amendment to the text (*infra* p. 25) and map (*infra* p.13) of the Comprehensive Plan related to agricultural resource land. The County has offered no record of a request by the BOCC to the PC to initiate these substantial changes in the text or map of the Comprehensive Plan. There was no prior draft proposal for these amendments to the text and map of the Comprehensive Plan. The County has offered no record of Planning Commission concurrence with the changes to the enacted text and map amendments.

The changes to Ordinance 1179 E were the enactment of LCC 17.10.126, a definitions amendment defining long-term agricultural resource lands, and an amendment of a zoning map designation that were not contained in the PC recommendations. There was no advance notice for these zoning amendments. There was no prior draft proposal for these amendments, although as explained *infra*, some of the provisions of LCC 17.10.126 b (but not of 126 a) had been discussed at p. 15 in the County's report entitled "Agriculture in Lewis County a preliminary report ...". (Ex. XII-41h, copy at Vol. 3 CP 379-397).

As to the designation of Agricultural lands in the Comprehensive Plan and Development Regulations, on July 22, 2003, the Planning Commission had recommended discrete parcels on 17 maps for designation or removal from designation as Agricultural Resource Lands

(“ARL”). (Ex. XII-40d p. 3, Vol. 2 CP 266; the transmittal resides at Tab 42 as Ex. XII-40k attached). Additional actions were recommended on the basis of maps prepared for the August 26, 2003 hearing. (Ex. XII-41j, attached as identified in Ex. XII-41f, Vol. 2 CP 266 AR Tab 51). At the September 8, 2003 hearing before the BOCC, one Walter Abplanalp inquired why his land had not been proposed for removal from ARL designation. Bob Johnson, director of planning, told him “Your proposal was not looked at specifically at this time.” (Ex. XII-43c, p. 2, Vol. 3 CP 442-450 at 442). Abplanalp stated his land was being used as a dairy. Mr. Abplanalp was told no proposal for change in the designation of his land had been made and that a change could not be considered on September 8. (Ex. XII-43c, p.2, Vol. 3 CP 442). Following close of testimony, counsel for the County recommended that the County could change the Comprehensive Plan and Development Regulation designation of Mr. Abplanalp’s land from ARL to a rural residential designation, referring to suggestions pertaining to minimum dairy size and parcel isolation contained in the report “Agriculture in Lewis County.” (Ex. XII-41h, p. 10 Vol. 3 CP 379-397 at 388). The report had never been proposed for adoption and was not adopted as a regulation. County Counsel specifically advised that the farm containing approximately 100 acres was too small for a dairy and that it was isolated from other designated ARL.

(Ex. XII-43 c, p. 6, 8, Vol. 3 CP 448-450. Thereupon the BOCC adopted the change, thereby further amending the Comprehensive Plan and Development Regulation maps.

The County has offered no record that the Board of County Commissioners had either published its own notice of a proposed change as required under RCW 36.70.630, -590, and -390 or initiated a request to the Planning Commission to consider the proposed change as required by RCW 36.70.640, -430, and -440.

IV. ARGUMENT

A. The Standard of Review

This is a review under the Administrative Procedure Act. Under the APA, appellate review is of the decision of the Growth Board and not the superior court Decision. *Leavitt v. Jefferson County*, 74 Wn. App. 668, 677, 875 P.2d 681 (1994). Issues of law are determined de novo by the Court of Appeals. *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156 (2002). Issues of fact are reviewed under the substantial evidence test. RCW 34.05.570(3)(e).

B. The Trial Court did not err when it reversed the Growth Board findings of compliance on notice issues

1. The County did not brief its appeal of the Trial Court decision on *Res Judicata* and has therefore abandoned the issue on appeal.

The first issue alleged in the County's notice of appeal claimed error in the trial court's finding that *res judicata* did not apply in this case. The County did not brief this issue and therefore abandoned it. *State v. Wood*, 89 Wn.2d 97, 99, 569 P.2d 1148 (1977):

Appellant did not address these contentions in his brief and we will not consider assignments of error which are supported neither by argument nor authority.

Accord: *Brown v. Safeway Stores*, 94 Wn.2d 359, 374, 617 P.2d 704 (1980); *Northern State Constr. v. Robbins*, 76 Wn.2d 357, 367, 457 P.2d 187 (1969).

2. RCW 36.70A.035 requires the county to have procedures providing for notice of proposed amendments to comprehensive plans and development regulations

Resolution of the issues presented in this case depends upon the proper construction of RCW 36.70A.035.

Under the GMA, notice procedures for proposed amendments to comprehensive plans and development regulations constitute an element of the public participation requirements of the act. RCW 36.70A.035(1) provides that

“the public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners ... of proposed amendments to comprehensive plans and development regulation.”

The content of notices is inferentially required in RCW 36.70A.140:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, ... public meetings after effective notice ...

The County's notice procedures for proposed amendments to the comprehensive plan and development regulations include a combination of state law and county ordinance provisions. In addition to the above, the Lewis County Code, Ch. 17.12; The Lewis County Comprehensive Plan, p.1-3; the Planning Enabling Act, Ch. 36.70 RCW; and RCW 36.32.120(7) contain specific requirements for notice of public hearings before the Planning Commission and the Board of County Commissioners.

The Lewis County Code procedures for processing changes to the comprehensive plan and development regulations are contained at LCC 17.12.050. The Lewis County Code at LCC 17.12.050(2)(a) provides:

Once the Planning Commission has completed the workshop portion of its program, it will publish a notice of public hearing and circulate a draft proposal for comment and public hearing.

Following its hearings, LCC 17.12.050(2)(i) requires the Planning Commission to submit its recommendations to the Board of County

Commissioners. Then at Section 17.12.050(3)(a) the Board of County Commissioners is required to

“publish a notice of public hearing on the materials directed by the Planning Commission.”

The Planning Enabling Act requires that there be at least one public hearing by the Planning Commission prior to the enactment of a comprehensive plan (RCW 36.70.380) or an official control (RCW 36.70.580)⁶. The notice requirements for hearings to adopt or amend a comprehensive plan or an official control are identically worded at RCW 36.70.390 and RCW 36.70.590:

Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county at least ten days before the hearing.

Under the Planning Enabling Act the Planning Commission is charged with the duty of preparing recommendations to the Board. Recommendations of the Planning Commission are required to be forwarded to the Board of County Commissioners for either consideration of a comprehensive plan amendment or an official control (development regulation). RCW 36.70.420 and -.610.

⁶ Zoning amendments are official controls. RCW 36.70.020(11).

3. Notice and hearing provisions of Ch. 36.70 RCW, Ch. 42.30 RCW, and RCW 36.32.120 address the same subject matter as RCW 36.70A.035, -.130 and -.140, Ch. 17.12 LCC, and the Comprehensive Plan, and should be construed *in pari materia*.

The notice provisions of RCW 36.70A.035, -.130 and -.140 require the County to have “notice procedures”. Ch. 36.70, the Planning Enabling Act and RCW 36.32.120(7) pertaining to enactments by a BOCC also have pertinent notice procedures. The Lewis County Comprehensive Plan at p. 1-3 and the Lewis County Code at Ch. 17.12 contain notice procedures. The notice procedure provisions of Ch. 36.70A do not specify that the notice procedure enactments must have been specially enacted under the GMA. Where statutes address the same subject matter they stand *in pari materia*. In *Personal Restraint of Yim*, 139 Wn.2d 581, 592, 989 P.2d 512 (1999) the court stated:

The significance of statutes being *in pari materia* is that they “must be construed together. ... and in construing [them] ... all acts relating to the same subject matter or having the same purpose should be read in connection therewith as together constituting one law.” (citations omitted)

RCW 7.16.070 pertaining to writs of certiorari and RCW 36.70.900 pertaining to boards of adjustment were construed as *in pari materia*. *Beach v. Board of Adjustment*, 73 Wn.2d 343, 346, 438 P.2d 617 (1968). And in *Whatcom County v. Brisbane*, 125 Wn.2d 345, 354, 884 P.2d 1326 (1994), the Court said:

The Planning Enabling Act and the Growth Management Act are two related statutes which should be "... read together to determine legislative purpose to achieve a "harmonious total statutory scheme ... which maintains the integrity of the respective statutes." Both statutes can be read consistently and harmoniously to carry out their intended legislative purpose. [citations omitted.]

We submit the notice procedures in the stated enactments should stand *in pari materia* and constitute the procedures that satisfy the requirement of the GMA for notice procedures and the goal of encouraging involvement of citizens in the planning process. They provide the foundations upon which the public may formulate their expectations when preparing to review and comment on proposals.

4. The Trial Court properly reversed the Growth Board's finding that the Abplanalp request was compliant

When the County considered the Abplanalp request for dedesignation of his land as Agricultural Resource Land, it had not followed the procedures provided for in any of its ordinances. The matter had not been reviewed by the Planning Commission, the staff, or the public when brought before the BOCC on September 8, 2003. The County claims that notice was not required because the issue was raised at a hearing,(Br. p. 13) was within the alternatives available,(Br. p. 14) that there was no GMA requirement for a pre-prepared document(Br. p. 14) and in any event petitioners had an opportunity for comment.(Br. p. 15)

Mr. Abplanalp has a 100-acre dairy in a rural area located at 238 Tucker Road, Ethel. (Ex XII-43c, p. 2; Vol. 3 CP 442 attached). This farm is more than 6 miles east of the I-5 freeway and not near any area proposed for change of designation by the County by either the July 22, 2003 Planning Commission recommendation or by the August 26, 2003 recommendation. (Ex. XII-41j, Ex. XII-40k, Vol 2 CP 266, Tab 42 AR.).

In recommending the change requested, counsel for the County had stated the farm was too small for a dairy and was isolated from designated Agricultural Resource Lands. However, agricultural designation criteria contained at LCC 17.30.590 do not recite either condition as criteria. That section recites:

Farmland of long-term commercial significance shall be those areas having the following characteristics:

- (a) Not subject to frequent overflow during the growing season accompanied by serious crop damage; and
- (b) Has prime farmland soil or soils as identified in LCC 17.30.580(1)(a); and
- (c) has sufficient irrigation capability; and
- (d) Is primarily devoted to commercial agricultural production; and
- (e) Has a minimum parcel size of 20 acres; and
- (f) Is not located within an adopted urban growth area.

There is no allegation any of the above criteria were not met.

It is undisputed that the act of designating or de-designating land as Agricultural Resource Land or any other change to a land use map involves an amendment to the Comprehensive Plan and to the

Development Regulations. RCW 36.70A.070(preamble), RCW 36.70A.040, RCW 36.70.330, RCW 36.70.560.

It is undisputed that the action of the BOCC in approving the designation did not follow or substantially follow the procedures provided in LCC 17.12.050 or the procedures contained in the Comprehensive Plan for amendments to the Comprehensive Plan.

Under LCC 17.12.050(1) a proposed amendment is initially introduced to the PC and there are procedures for PC hearing and PC recommendations. The Comprehensive Plan does allow for proposals to be initiated by the County Commissioners, but requires:

After due notice and hearing, the Board of Lewis County Commissioners may amend, supplement or modify the text and/or maps of the Lewis County Comprehensive Plan. An amendment may be amended, adopted, or supplemented by the board upon the recommendation of or concurrence of the Planning Commission after a public hearing. (Comp. Plan p. 1-3)

The County has offered no record that the Planning Commission concurred in the action of the BOCC.

Other authority at RCW 36.70.430 permits the BOCC to initiate a change in a comprehensive plan, but only after first referring the matter to the Planning Commission for a report and recommendation.

The issue becomes whether RCW 36.70A.035(2) authorizes a County to substantially change a proposed amendment to a comprehensive

plan or development regulation without opportunity for review and comment when the change is not consistent with the designation criteria contained in the County's ordinances to authorize the change; when it is not within the scope of alternative proposals presented for consideration; when there had not been opportunity even for a staff review; and when none of the county's review procedures are followed, and when the public does not have any opportunity to prepare for and make comments.

The County asserted that Petitioners had an opportunity to comment at the hearing. However Bob Johnson, the director of the department had said that Mr. Abplanalp's land "was not looked at specifically" by the Planning Staff and that a change would not be considered on September 8. (Ex. XII-43c, p. 2, Vol. 3 CP 443).

Petitioners should have had a right to sufficient time to review Mr. Abplanalp's proposal and to prepare their reasons for inclusion or non-inclusion of the parcel in the designation process. That amount of time was not afforded at a hearing where they were told the matter was not on the agenda.

Although the County contends the Abplanalp action was a part of the overall process of designating or de-designating agricultural resource land, by the County's own act of informing the public the Abplanalp proposal was not on the agenda and there was no advance and adequate

notice to allow Petitioners to prepare for, gather evidence, and intelligently comment on the issue prior to adoption. The Abplanalp land at Tucker Road was not so situated as to constitute a part of either the Planning Commission recommendation of July 22, 2003 or the BOCC proposal of August 11. Ex. XII-41 h, XII-40 k, Vol. 3 CP 379-397.

The PC at the time of making its recommendations on August 26 clearly segregated the alternatives proposed by charting whether it was selecting the “Planning Commission” proposal or the Staff Consideration” proposal for its “Final Recommendations”. (Ex. XII-42p, Vol. 3 CP 421-425, copy at 424, AR 672 attached). Because the Abplanalp request was not within the ambit of either proposal we disagree with the County’s assertion the proposal was “well within the alternatives available for public comment”.

Citing to *Burrow v. Kitsap County* CPSGMHB No. 99-3-0018, FDO, 3-29-90 , the county urges a draft proposal should not have been required. The Burrow opinion does not recite the underlying ordinance provisions applicable to that decision. Lewis County’s procedures under LCC 17.20.050(2)(a) specifically require “a draft proposal for public comment and hearing”.

The dedesignation of the Abplanalp parcel was without notice required by Ch. 17.12 and did not comply with the designation criteria

enacted by the County as LCC 17.30.590. The petitioner's right to expect the County follow its own enacted procedures is fundamental. *Pierce Cy. Sheriff v. Civ. Srv. Comm.*, 98 Wn.2d 690, 693-94, 658 P.2d 648 (1983):

An agency's violation of the rules which govern its exercise of discretion is certainly contrary to law and, just as the right to be free from arbitrary and capricious action, the right to have the agency abide by the rules to which it is subject is also fundamental.

Burrow v. Kitsap County, CPSGMHB No. 99-3-0018, FDO, 3-29-00 should not be controlling especially where the County did not follow its own enacted procedures.

The trial judge did not err when he concluded at p. 12 lines 5-9 of his Decision (Vol. 1 CP 119) that the Abplanalp proposal was a separate proposal and that the County had not afforded petitioners an opportunity to review and comment on it.

5. The Trial Court did not err when it reversed the Growth Board's finding of compliance on the Issue of Resolution 03-368 and Ordinance 1179E.

When the County enacted Resolution 03-368 and Ordinance 1179E it considered new matter not previously proposed in any draft reviewable by the public. Despite a USDA Census report showing that more than 117,000 acres of land were devoted to commercial agriculture in the year 1997, the County amended its Comprehensive Plan to provide justification

that designation of 40,000 acres was sufficient.(Ex. XII-36cc p. 168 Tab 42 AR.)

Resolution 03-368 undertook to amend the Comprehensive Plan. This provision set the amount of land to be designated at around 40,000 acres.

The change in Comprehensive Plan Resolution 03-368 not contained in the recommendation of the Planning Commission was as follows:

Lands necessary for Designation as Agriculture Lands of Long-Term Commercial Significance

The long terms (sic) needs of Lewis County commercially significant agriculture industry are served by the designation of 40,000 acres or more of lands, including bottom lands and lands with good soils and irrigation. (Ex. XII-44b, Vol. 3 CP 461-462.)

The Comprehensive Plan does contain a procedure for initiation of a proposal for enacting a change to it. As stated *supra*, at p. 21 the BOCC must give due notice and conduct a public hearing and must have the recommendation or concurrence of the Planning Commission in order to enact a change to the Comprehensive Plan. There is no authority for a BOCC to propose anything outside of a public meeting (RCW 42.30.060) and the County has offered no record of a meeting to initiate the change to the Comprehensive Plan.

Ordinance 1179E redefined agricultural land through a new section enacted as LCC 17.10.126(a) to be

“those lands necessary to support the current and future needs of the industry, based on the nature and future of the industry as an economic activity and not on the mere presence of good soils.”

The County failed to follow its own enactments governing amendments to the Comprehensive Plan and the Development Regulations. (LCC 17.12.050, Comp. Plan, p. 1-3.) The proposals were not within the recommendations of the Planning Commission. LCC 17.12.050 does not allow the BOCC to adopt new changes not previously proposed after its hearing without providing for further review. For the Board of County Commissioners to consider a change to an “official control” it is required to follow the procedures of RCW 36.70.630. That statute requires that if, at a meeting, the Board

... deems a change in the recommendations of the planning agency to be necessary, the change shall not be incorporated in the recommended control until the board shall conduct its own public hearing, giving notice thereof ...

There is no record of a meeting of the BOCC to authorize a change in the recommendations of the PC and there was no notice that the BOCC was considering such a change.

Finally, RCW 36.70A.035(2) provides:

... if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development

regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment shall be provided before the local legislative body votes on the proposed change.

The BOCC did not provide any opportunity for review and comment after it decided it would consider and before it voted on the matter.

The purpose of the amendments was to reduce the amount of land to be considered for designation. The amendments permitted designation of land without regard to its agricultural capability as long as 40,000 acres of ARL was designated.

The County considered these changes to be so significant that it appealed the Trial Court's affirmance of the Growth Board decision of noncompliance directly to the Supreme Court. The Supreme Court held that economic issues could be considered by the County, but held that the County's definition was wrong. *Lewis County v. Western Washington Growth Management Hearings Board ("Lewis County")*, 157 Wn.2d 488, 499 ¶ 11; 139 P.3d 1096 (2006). The Supreme Court upheld the Growth Board determination that the provisions for "farm home" and "farm center" were noncompliant and invalid. *Lewis County* at ¶20. That appeal had not considered notice issues.

The County now argues, relying solely on *Burrow*, that changes made were within the range of alternatives available for comment, even though there was no prior proposal or alternate proposal before either the PC or the BOCC and the County failed to follow its own adopted procedures for consideration of the matter.

Given that a County has only those powers expressly delegated or necessarily implied from the delegation, a question is whether or not a County has discretion to provide or not provide the notice called for in its own ordinances enacted within the scope of RCW 36.70A.035(2). *Mt. Spokane Skiing Corp.* at 177; *Skagit Surveyors v. Friends* 135 Wn.2d 542, 558, 958 P.2d 962 (1998).

While we know of no case that has addressed this precise question it would seem the requirement that the County must enact notice procedures, would necessarily imply that the County must follow or substantially follow the procedures it enacted in implementation of the requirement. The failure to follow the enacted procedures constitutes a failure to comply with the enabling authority, in this case RCW 36.70A.035. The members of the public would reasonably expect that the agency must give its notice in compliance with the law. When a notice is required it must be a legal notice.

When a County proposes to enact an ordinance, the Board of County Commissioners must give notice that complies with RCW 36.32.120(7). The statute provides:

“the notice must set out a copy of the proposed regulations or summarize the content of each proposed regulation ...”

RCW 36.32.120(7) further provides:

“For purposes of this subsection, a summary shall mean a brief description which succinctly describes the main points of the proposed regulation. When the county publishes a summary, the publication shall include a statement that the full text of the proposed regulation will be mailed upon request.”

The notice provided by the County for enactment of Section 17.10.126 did not indicate that there would be text provisions or amendments to text provisions. It stated:

The hearing will be for the purpose of taking testimony concerning proposed amendments to the Comprehensive Plan and zoning regulations, designating agricultural land of long-term commercial significance. (Ex. XII-43, Vol. 3 CP 428 attached.)

There is no hint in the notice that the hearing would consider anything other than the recommendations of the Planning Commission to designate ARL land and no hint that the BOCC intended to initiate some other change.

Yet the proposed changes were material. Section 17.10.126(a) provided that agriculture would be based on the “future of the industry as an economic activity and not on the mere presence of good soils.”

Petitioners could no longer rely on soil characteristics and competing influences as keys to designation of agricultural land.

Section 17.10.126(b) was materially different from the text presented in the report “Agriculture in Lewis County a preliminary report ...” (Ex. XII-41h, Vol. 3 CP 379-397.) in that it removed the limitation that “farm homes” and “farm centers” could set aside up to 10 acres for those purposes only on parcels 40 acres or larger in size. Given that the median size of farms in Lewis County was listed in the 1997 Census of Agriculture (Ex. XII-36 cc, p. 168, Tab 42 AR.) as 45 acres, the elimination of that requirement made these take outs available on all farms and not just the half that included the larger farms. A farm of 20 acres in size would thereby be able to set aside half of its acreage for non-farm activities.

There had been no prior proposal for LCC 17.10.126(a) or for the similar change in Resolution 03-368. There had been no draft proposal for LCC 17.10.126(b), but the Planning Commission had said the County could enact a provision. The recommendation did not comply with LCC 17.12.050(2)(a), which provides for hearings and recommendations on a proposal. Nothing in LCC 17.12.050 authorizes the transmittal of anything other than a proposed recommendation for adoption with findings to the Board of County Commissioners. Because the text of

Ordinance 1179E section 17.10.126(a) and of the similar provisions in Resolution 03-368 had not been previously proposed in any form, it could not be stated they were within the range of alternatives available for public comment. The public had no reason to expect changes to the text of the Comprehensive Plan and development regulations when the County had previously completed its amendments to the development regulations to comply with the Growth Board orders on June 2, 2003. (Ex. XII-35h, Vol. 2 CP 266, Tab 51 AR). The dropping of the 40-acre limitation on applicability of “farm homes” and “farm centers” was not within the range of alternatives proposed.

The County asserts that the proposed changes were available at the commencement of the hearing and that was sufficient opportunity for review and comment. The County has never offered any evidence that the proposed changes were available to the public at the commencement of the hearing. Although petitioners deny that the proposals were available at the commencement of the hearing, even if they were so available, it was insufficient to provide petitioners any reasonable opportunity for review including gathering of evidence and intelligent preparation of comments.

In *Barrie v. Kitsap County*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1974) the court reasoned:

The purpose of the notice required by this statute is to fairly and sufficiently apprise those who may be affected by the proposed action of the nature and character of the amendment so that they may intelligently prepare for the hearing.

In *Glaspey and Sons v. Conrad*, 83 Wn. 2d 707, 712, 51 P.2d 934 (1974), where changes had been presented at the commencement of the public hearing the court held the notice employed by the board accorded plaintiff neither fundamental fairness nor the procedural due process envisioned by RCW 36.70.590 and .630 and stated:

It is not enough that the published notice enabled plaintiff to be present at the hearing. As stated above, it was also necessary that the notice have informed plaintiff of the hearing's purpose so it could intelligently represent itself. However, adequate notice of a public hearing has another, more subtle reason that goes beyond merely enabling the opposition to give vent to its feelings. It is important that a board have an opportunity to reach an "informed" decision. That reason is thwarted if interested parties are prevented from presenting their view because of a board's failure to adequately disclose the true "purpose of the hearing."

Because the County closed its hearings before the public had an opportunity for review and comment the trial court was not in error when it ruled the Growth Board decision should be reversed.

6. The evidence in the record is sufficient to support the trial court decision

The County complains there was not sufficient evidence in the record to support the trial court decision.

The County's first argument is that the hearings board could not consider those notice procedures whose source emanated from the Planning Enabling Act. We disagree. First, the GMA did not repeal existing provisions pertaining to planning and zoning. It merely imposed new requirements. The Act did not specify that the processes and procedures required by the Act must have been enacted specifically to comply with the Act. Instead, it specifies the characteristics the County's participation and notice procedures must contain. For these reasons and those stated *supra* at p. 5, the procedures contained in the Planning Enabling Act, are procedures that must be met to satisfy the requirements of the GMA.

The County relies on provisions of RCW 36.70A.035(2)(b)(ii) as authorizing it to omit notice for the enactment of Resolution 03-368 and Ordinance 1179 E. That statute operates only when the opportunity for review and comment has passed under the county's procedures. RCW 36.70A.035(2)(a). In this case, that opportunity passed only because the County did not offer the procedural opportunities called for in its ordinances in the first place.

The County then expanded its "scope of alternatives" argument to include discussions that had never been reduced to proposals. By stating the resolution language amending the Comprehensive Plan simply

incorporated the Planning Commission recommendations, the County even suggests that the Planning Commission approval of staff's Agriculture memoranda constituted a "draft-at-will" authority for the County to prepare amendments to the Comprehensive Plan and Development Regulations. (Opening Br. p 19) Petitioners were misled and deceived by the moves made by the County.

The County interchanges topics discussed with proposals. LCC 17.12.050 distinguishes those functions. .050(1) speaks of an introduction of a "topic". .050(2) addresses the formulation of a "draft proposal". If a topic never becomes a draft proposal, there is no basis for holding the public responsible for review and comment thereon. The report entitled "Agriculture in Lewis County" was at most a topic. It's purpose according to the Planning Commission motion of June 10, 2003 was to

"... prepare a technical report to supplement the compliance work for agricultural resource land done by the Planning Commission over the last 9 months." (Ex. XII-37p. Vol. 2 CP 266 referring to Ex. XII-37 f; Ex. XII-37p is the verbatim motion at AR 51 attached.)

It was not a proposal. If reduced to a proposal at the BOCC hearing, the County had an obligation to provide for review and comment on the proposal. The County seems to suggest that since petitioners had been present at most sessions they should have anticipated that some discussions might be reduced to proposals without notice. We disagree.

Petitioners complained about lack of notice at every opportunity. See Petitioners opening compliance Brief dated October 21, 2003, pp. 16-22, Tab 42 AR 872-875, excerpts attached; Reply Br. 12-1-03, pp 2-3, 16-17 Copy at Tab 59 AR 1127-1172, excerpts attached; Petitioner's Brief, 12-23-03, Vinatieri et al., Issue No. 1 pp 1-3, AR Tab 11 AR 114-141, excerpt attached. The County had a duty to produce a record and had ample opportunity to provide the evidence in the record proving notice if notice had occurred. WAC 242-02-520 required that the County provide all evidence it had concerning notice:

Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index of all material used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished. In addition, the written or tape recorded record of the legislative proceedings where action was taken shall be available to the parties for inspection.

LCC 17.12.050 provides for at least 15 days notice; the Comprehensive Plan requires the recommendation or concurrence of the PC; enactments under Ch. 36.70 require at least 10 days notice; and enactments of ordinances before the BOCC require at least 10 days notice. The most notice the County postulates is that under business practices they may have provided notice at the beginning of the hearing. The record fails to provide evidence of this alleged business practice. The approved

minutes of the September 8 hearing do not confirm that the County gave any such notice at the beginning of the hearing. Although at least two petitioners have personal knowledge that the County's amendments were not proffered until after the close of hearing, we do not find a declaration stating otherwise from the County in the record.

However the record is not as bereft of evidence as the County would have you believe. There is no record of a meeting of the PC or of the BOCC proposing changes to the recommendations made by the PC at its August 26 hearing. The approved minutes of the September 8 hearing before the BOCC contain summaries from Principal Planner Robert Johnson and from consultant Mike McCormick. (Ex. XII-43 b, p.2-3, Vol. 3 CP 432-439. attached.)

Johnson: He explained the Planning Commission held public hearings and made a recommendation to the Board. He briefly reviewed the maps submitted for the Board's consideration.

McCormick: He feels the recommendation from the Planning Commission truly responds to the designation of Agricultural Lands of Long Term Commercial Significance. He stated he feels this is a responsible conclusion

Neither had referred to recommendations made at any time other than at the August 26, 2003 hearing. Had there been proposed changes in the ordinance from Planning Commission recommendations in the offing, proffered at the hearing, these county officers had at least a fundamental

fairness duty to point them out to the public. That, they did not do. The record should contain the record of the public meeting that authorized the proposed changes to be considered at public hearing. See RCW 42.30.060 and RCW 36.70.640. There is no such record. The evidence therefore is that the BOCC first considered the changes as a proposal after the close of hearing on September 8, 2003. At that point it had a duty under its procedures to hold a hearing on the changes. See RCW 36.70.630 and RCW 36.70A.035(2)(a). Even if the changes had been pointed out to the public on the day of hearing it would have been, under County Ordinance, insufficient, and insufficient to afford an opportunity to prepare a response. *Glaspey* at 712.

The duty contained in RCW 36.70A.035(2) is to provide an opportunity to “review and comment”. The word “review” in ordinary meaning implies an opportunity to study the matter. *Merriam Webster’s Deluxe Dictionary 10th Collegiate Ed.*: “to examine or study again”. Notice at the commencement of a hearing is not that opportunity.

The County had not provided an opportunity for a review and therefore the trial court did not err.

C. The Trial Court erred when it declined to find challenged provisions of Ordinance 1179E and Resolution 03-368 void for failure to provide proper notice of intent to enact those provisions.

1. The Western Washington Growth Management Hearings Board erred when it declined to find Resolution 03-368 and Ordinance 1179 E void for denial of procedural due process.

Even though the County failed to follow its own procedures in the adoption of Resolution 03-368 and Ordinance 1179E the Growth Board nevertheless declined to find a procedural due process violation on the ground it lacked authority to address constitutional issues.

While the decision is consistent with other decisions of Hearings Boards, there has been no judicial determination of the matter. The Washington Administrative Code at WAC 242-02-660(2) provides a board may judicially notice:

The Constitution of the state of Washington; decisions of the state courts; acts of the legislature ...

For a constitutional challenge to succeed, generally there must be a violation of a fundamental right. *See Leavitt v. Jefferson County* 74 Wn. App. 668, 681-84, 875 P.2d 681 (1994); *Chaussee v. Snohomish Cy.*, 38 Wn. App. 630, 642, 689 P.2d 1084 (1984); *Barrie v. Kitsap Cy.*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1974).

The failure of a County to follow statutory procedures and its own resolutions and ordinances has been ruled a violation of fundamental

rights. *Pierce Cy. Sheriff v. Civ. Serv. Comm.*, 98 Wn.2d 690, 693-94, 658 P.2d 648 (1983).

An agency's violation of the rules which govern its exercise of discretion is certainly contrary to law and, just as the right to be free from arbitrary and capricious action, the right to have the agency abide by the rules to which it is subject is also fundamental.

The County's enactments of Resolution 03-368 limiting designation of the more than 117,000 acres of land devoted to commercial agriculture to 40,000 acres; and Ordinance 1179E redefining agricultural lands as "lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils" constitute fundamental departures from prior considerations. These enactments affect the manner in which citizens and some of the petitioners use their lands. Because these provisions were enacted without prior notice, petitioners were without the ability to prepare and defend their positions.

The statutory remedy under RCW 36.70A.300 and .330 for noncompliance continues the offending enactment in effect. The remedy of invalidity under section 36.70A.302(2) is effective only after the finding of invalidity. Permits can be issued in the interim between the

date of the enactment and the date of a Growth Board order. The public is not protected and these remedies are not adequate.

Because the right of notice, the right to prepare and be heard are fundamental rights and because the remedies of noncompliance and invalidity are inadequate, and because the Growth Board may judicially notice the constitution of the state of Washington, the Growth Board should, as a necessary implication of authority expressly granted, have the authority to rule on the constitutional issue. WAC 242-02-660(2). That is, that when an ordinance, enacted without notice, is challenged, Growth Boards should be able to treat the ordinance as void and therefore not reviewable. An agency cannot be in compliance if the ordinance purporting to address the subject matter is void as a result of failure to provide proper notice.

2. The Trial Court has inherent authority to remedy a manifest abuse of discretion or failure of the County to afford procedural due process and to find an ordinance and resolution enacted without notice void on that ground

The trial court had inherent authority to consider whether the ordinance and resolution provisions should be void because the County failed to follow enabling legislation when adopting legislative enactments.. The court may consider the matter as a manifest abuse of discretion or as a violation of procedural due process.

Circumstances under which a court may invoke its inherent authority are limited. The limitations are expressed in *Pierce Cy. Sheriff v. Civil Service Comm.* 98 Wn.2d 690, 693-94, 658 P.2d 648 (1983)

the courts have inherent constitutional power to review “illegal or manifestly arbitrary and capricious action violative of fundamental rights.” (p. 693)

The courts’ inherent power of review extends to administrative action which is contrary to law as well as that which is arbitrary and capricious. An agency’s violation of the rules which govern its exercise of discretion is certainly contrary to law and, just as the right to be free from arbitrary and capricious action, the right to have the agency abide by the rules to which it is subject is also fundamental. The courts thus have inherent power to review agency action to assure its compliance with applicable rules. (p. 694, citations omitted).

Here, the BOCC failed to follow or substantially follow the procedures its own Comprehensive Plan and development regulations had prescribed and Petitioners were harmed by being excluded from providing evidence and comment on fundamental planning issues. The BOCC enacted amendments to the Comprehensive Plan and development regulations that were internally inconsistent with the remainder of the Plan and development regulations. The amendments were not within the scope of alternatives proposed. There was no evidence of any meeting to authorize the amendments to be proposed. Even if the changes were available at the commencement of the hearing on these facts there was a

manifest abuse of discretion and a failure to provide Petitioners with proper due process procedures. *Glaspey* at 712.

A superior court can grant relief if:

[T]he order is in violation of a constitutional provision; the order is outside the statutory authority or jurisdiction of the agency; an agency engaged in an unlawful decision-making process or failed to follow its prescribed procedure; ... the order is inconsistent with a rule of the agency; or the order is arbitrary or capricious. RCW 34.05.570. *Torrance v. King County*, 136 Wn.2d 783, 790-91, 966 P.2d 891 (1998).

See also *Harris v. Hornbaker*, 98 Wn.2d 650, 660, 658 P.2d 1219 (1983). Where there has been an act in violation of the Petitioner's fundamental rights the court has inherent authority to correct the act even in the absence of pleadings. *Bridle Trails v. Bellevue*, 45 Wn. App. 248, 252, 724 P.2d 1110 (1986).

The County has argued that Petitioners elected to proceed under a petition for review and did not raise the notice issue in the companion compliance case. The County has misstated. Petitioners raised the issue in its brief on Compliance (Compliance Br. pp 18-22 Tab 42 AR 873-877 attached) as well as in its pleadings to initiate a petition for review to the hearings board. (PFR issue 3.1 Tab 1 AR 1-9). Petitioners made every effort to exhaust their administrative remedies. To the extent the County wishes to assert some claim of laches, petitioners believe such claim should be unavailable.

We submit the trial court erred when it determined that it lacked the authority to consider a manifest error or a constitutional due process claim.

3. The Court of Appeals has discretionary authority to consider a constitutional due process claim even if raised for the first time on appeal.

RAP 2.5 of the Rules of Appellate Procedure does authorize a party to raise a claim for the first time on appeal when there is a manifest error affecting a constitutional right. This rule has been held applicable to civil cases. *State v. WWJ Corporation* 138 Wn.2d 595, 601-02, 980 P.2d 1257 (1999).

Petitioners attempted to raise the issue of failure to provide notice at every level. They believed they had, in the body of the pleadings to Superior Court, raised the notice issues as failure to provide procedural due process. However, if this court were to find the pleadings in some manner defective, it has the discretion to determine that there was a manifest abuse of discretion on the part of the County and has the authority to void the subject provisions of the ordinance and resolution where notice was substantively inadequate.


V. CONCLUSION

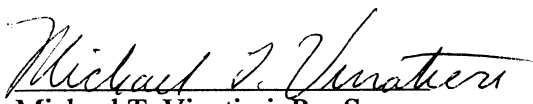
For the reasons given, the court should affirm the trial court's determination that Lewis County failed to provide proper notice for the

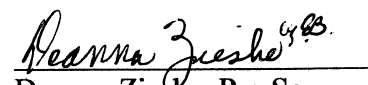
enactment of portions of Resolution 03-368 and Ordinance 1179E,
including those map amendments occasioned by the granting of the
Abplanalp request. It should reverse the trial court's determination the
Growth Board lacked authority to determine it could not review a void
enactment. It should reverse the trial court's determination it lacked
inherent authority to declare the above enactments were void on the
ground the County had violated procedural due process to Petitioners.

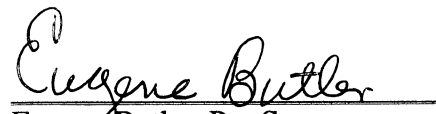
Dated: November 29, 2006


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APPENDICES

Appendix 1

Comprehensive Plan Amendment Provisions
Lewis County Code 2.10.020, -.030

Appendix 2

Excerpts, 1997 Census of Agriculture, 1997 Census, large book, Ex. XII-36 r, excerpt at Tab 42 AR

Appendix 3

Minutes of 6-10-03 PC meeting and Motion, Ex. XII-37f, and 37p, CP 266, Tab 42 AR

Appendix 4

Minutes of 7-22-03 PC meeting, recommendations, and transmittal, Ex. XII-40d and Ex. XII-40k, CP 266; Tab 42 AR

Appendix 5

Minutes of 8-12-03 PC meeting, Ex. XII-41 f, CP 266; Letter from BOCC Ex. XII-41 g; and proposed zoning map Ex. XII-41j, Tab 42AR

Appendix 6

Minutes of 8-26-03 PC meeting, Ex. XII 42 h, CP 266; transmittal of PC recommendations Ex. XII-42p. CP 421-425, Tab 42 AR

Appendix 7

Notice of Hearing before BOCC, Ex. XII-43, CP 428

Appendix 8

BOCC minutes of 9-8-03 hearing XII-43b, CP 430-439

Appendix 9

BOCC transcript excerpts, Ex. XII-43c, CP 442-450

Appendix 10

Excerpts of Petitioner Compliance Br 10-21-03, Tab 42 AR 846-900

Appendix 11

Excerpts Petitioner Reply Br. 12-1-03, Tab 59 AR 1299-1216

Appendix 12

Excerpts Vinatieri opening Br. 12-23-03, AR 114-141

APPENDIX 1

areas, the goal is to enable smaller rural communities to grow and improve the communities' overall well-being consistent with Rural Area Guidelines, Chapter 36.707.030, 070(5) and associated regulations without overtaxing public facilities and utilities, and while protecting resource lands and critical areas and preserving rural character by avoiding urban sprawl.

Rural County Land Use Designations

During the summer of 1998, numerous public meetings and workshops were conducted to develop a recommended preferred land use alternative for Lewis County's rural areas. Citizen input was critical in the development of the proposed rural area designations that reflect the unique character of the many pockets of more intensive development that can be found throughout the County. The result is the variety of land use designations which are contained in the Rural Lands Sub-Element of the Land Use Element.

Joint Planning Commission/Comprehensive Plan Citizens Committee

Lewis County established the Joint Planning Commission/Comprehensive Plan Citizen Committee to serve as the citizen oversight committee on plan development. This group of dedicated citizen volunteers met frequently over the course of plan development, often participating in lengthy meetings deliberating on draft Plan policy. The Joint Planning Commission/Citizen Committee was charged with reviewing draft plan policy, background information for each of the plan elements, and formulation of the Rural Sub-Element of the Land Use Element which is the heart of the comprehensive plan. Members also hosted numerous public workshops throughout Lewis County in addition to their regularly scheduled meetings.

Public Workshops and Meetings

During the course of comprehensive plan development, Lewis County held over fifty public workshops and meetings on various elements of the comprehensive plan. These workshops were in addition to the Planning Commission's regularly scheduled workshops and were designed specifically to receive citizen input on the comprehensive plan. Many of the workshops were designed to allow interaction between citizens, such as the roundtable discussions which took place during the Visioning process. These workshops were held throughout the planning process in multiple locations to increase the opportunity for participation of residents living beyond the I-5 corridor. Workshops were held in Centralia, Chehalis, Morton, Mossyrock, Newaukum Hill, Packwood, Winlock and Toledo.

Comprehensive Plan Amendment Process

The Growth Management Act (GMA) makes the comprehensive land use plan and development regulations subject to continuing evaluation and review by the County. The Lewis County Comprehensive Plan will be reviewed and updated at least once every five years but no more frequently than once a year.

The GMA allows for certain exceptions to the annual amendment limitation. The exceptions to this provision are 1) amendments to the Comprehensive Plan resulting from updates to the Capital Facilities Plan; and/or 2) the adoption of subarea plan or master plan documents. In

addition to these two exceptions, the GMA also allows for amendments which are necessary to respond to an emergency situation. The following is a description of the amendment process:

Initiation of Amendments

- a. By motion of the Board of Lewis County Commissioners, or by the Planning Commission;
- b. By a property owner or county resident filing an application with the Planning Department on a standard form available from the Department;
- c. The Planning Commission will receive applications for amending or supplementing the Lewis County Comprehensive Plan up until 30 days prior to the Planning Commission's September public hearing, to allow adequate time for processing the motion of application and to allow for proper public notification of the proposals. Applications received after that date will need to wait until the next year's plan amendment cycle.

Timing

Proposals to amend the comprehensive plan will be accepted at any time, and will be considered along with all other proposals as part of the annual comprehensive plan review and amendment process.

The County shall adopt development regulations to promote coordinated review and amendment of the comprehensive plan. All proposed amendments in any year shall be viewed concurrently, except those exempt from the annual review limitation. Where a comprehensive plan change also involves a change in development regulations, the plan change and the development regulations change will be addressed together, to assure all impacts are considered.

Emergency situations that require amendments outside of the normal schedule must be based on findings that show that the amendment was needed to deal with an emergency situation affecting a neighborhood, community, or the County as a whole, and not the personal emergency of a particular applicant or property owner. Before they consider whether to allow an emergency amendment, the Board of County Commissioners must approve written findings that document the nature of the emergency.

To make sure that the comprehensive plan stays consistent, the Planning Department will evaluate it for consistency internally, with the plans of other jurisdictions, and with the development regulations. The results of this review will be provided to the Planning Commission for their consideration as part of its regular September agenda.

The GMA requires Lewis County to review its designated Urban Growth Areas and the densities permitted within both the incorporated and unincorporated portions of each urban growth area at least every ten years and revise the plan to accommodate the urban growth projected for the next twenty years.

Adoption

After due notice and public hearing, the Board of Lewis County Commissioners may amend, supplement or modify the text and/or maps of the Lewis County Comprehensive Plan. An

amendment may be amended, adopted, or supplemented by the board upon the recommendation of or with the concurrence of the Planning Commission after a public hearing.

Documentation

The record that accompanies any amendment to the Comprehensive Plan or development regulations will be similar to the record for the adoption of the initial plan and regulations. This means that whenever a provision of the comprehensive plan or development regulations is based on factual data, that data or a clear reference of its source will become part of the record of adoption. Also, the record will describe how public participation requirements were met. Public hearings will be recorded, and tape recordings of the proceedings will be kept.

Development Regulations

Following the adoption of this Comprehensive Plan, Lewis County will exercise its emergency rule making authority to adopt interim ordinances to implement key provisions of this plan. The County will then initiate a more systematic review of its development regulations and will revise them in a manner consistent with the provisions of this plan and will make a finding to that effect.

It is important to note that the recent listing of certain species of salmon as Endangered or Threatened Species is an important area of concern for Lewis County. Although state and federal guidelines for compliance have not been issued, the Lewis County Planning Commission has already met with representatives of Governor Locke's Salmon Recovery Team, the National Marine Fisheries Service, and the Lower Columbia Fish Recovery Board to discuss an implementation strategy. It is expected that Lewis County will address ESA compliance through the process of revising its development regulations and through future comprehensive plan amendments.

Current Regulations to Implement Plan Guidelines

The following development regulations as they now exist and as subsequently amended are specifically identified as GMA regulations and all decisions taken under these regulations shall be consistent with, and in accordance with, the goals set forth in the plan. Titles 15, 16, and 17 of the Lewis County Code are specifically adopted as "GMA" regulations and "written policies" under the State Environmental Policy Act and the Lewis County Shoreline Management Master Program.

Citizen Involvement

As required by the GMA, Lewis County established procedures for "early and continuous" public participation in the development and amendment of the Comprehensive Plan and its implementing development regulations. When amendments are proposed for adoption, the same public hearing procedure will be followed that was used for the initial adoption of the Comprehensive Plan.

Submissions to the State

Proposed amendments to the Comprehensive Plan or development regulations will be submitted to the Washington State Department of Community, Trade and Economic

county commissioners, dated September 30, 1994, attached to the ordinance codified in this section and posted at each shop. [Ord. 1157, 1998; Ord. 1113B, 1994; Ord. 1113A, 1994; Ord. 1113 Addendum A, 1991]

2.05.110 Conditional use designation.

(1) The following areas will be "smoking allowed" with conditional use designation; which means that if there is a personnel change or a substantiated indication of a smoke inhalation problem to those within the sphere of the "smoking allowed" area, the affected area will be considered for "smoke free" designation. This will be the decision of the board of county commissioners and the board's decision will be final.

(a) Packwood Senior Center "Smoking Room".

(2) All areas not specifically designated "smoking allowed" or addressed in the smoking chapter, as amended, will be "smoke free". [Ord. 1157, 1998; Ord. 1113B, 1994; Ord. 1113A, 1994; Ord. 1113 Addendum A, 1991]

Chapter 2.10

PLANNING DEPARTMENT

Sections:

- 2.10.010 Purpose.
- 2.10.020 Planning department.
- 2.10.030 Planning commission.
- 2.10.040 Financing and planning.

2.10.010 Purpose.

(1) Title. The title of this chapter shall be the Lewis County planning department chapter.

(2) Purpose. The purpose of this chapter shall be:

(a) To create a planning department, and planning commission;

(b) To provide for appointment to staggered terms of planning commission members and for their succession;

(c) To provide for appointment of a planning director and organization of a planning department; and

(d) To define the duties and responsibilities of the planning department, hearing examiner and planning commission. [Ord. 1157, 1998; Ord. 1147, 1995; Ord. 1042 Art. I, 1975]

2.10.020 Planning department.

(1) Established. Pursuant to RCW 36.70.040, a Lewis County planning department is hereby created, which shall function and be organized as any other department of Lewis County.

(2) Powers and Duties. The powers and duties of the Lewis County planning department shall be such as are prescribed by Chapter 36.70 RCW, as amended, and other applicable laws of the state. When directed to do so by the board of Lewis County commissioners, the Lewis County planning department shall also perform such other duties as are not inconsistent the laws of the state.

(3) **Administrative Responsibilities.** A director of planning shall be appointed by the Lewis County board of commissioners, and he shall be responsible for the proper operation of the Lewis County planning department. He shall be directly responsible to the board of Lewis County commissioners, and shall have responsibility of employing, supervising, and dismissing personnel of the planning department. He shall be responsible for providing secretarial and technical assistance to the Lewis County planning commission, hereinafter created and established. [Ord. 1157, 1998; Ord. 1042 Art. II, 1975]

2.10.030 Planning commission.

(1) **Created and Composition.** Pursuant to RCW 36.70.040, there is hereby created a Lewis County planning commission, consisting of nine members, which shall assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan for Lewis County, Washington, and recommendation to the planning department for the adoption of official controls and/or amendments thereto.

(2) **Appointment.** Members of the planning commission shall be appointed by the chairman of the board of Lewis County commissioners, with the approval of the board of county commissioners; provided, each member of the board of county commissioners shall submit to the chairman a list of nominees residing in his county commissioner's district, and the chairman shall make his appointments from such list as follows: three planning commission members from each county commissioner district.

(3) **Terms.** The terms of office for planning commission members shall be staggered as follows: two commission members shall be appointed for one year; two commission members shall be appointed for two years; two commission members shall be appointed for three years; and three commission members shall be appointed for four years, and upon the expiration of the term of such original mem-

bers, the term of office of each shall be four years; provided, that the staggering of terms shall be so arranged that the expiration of terms shall not coincide for all commission members from any county commissioner's district.

(4) **Vacancies.** Vacancies resulting from the expiration of a term of office shall be filled by appointment by the chairman of the board of county commissioners, with the approval of the members of the board of county commissioners, from the same county commissioner's district as that of the vacating member, for a period of four years. Vacancies occurring for any reason other than expiration of a term of office shall be by appointment as set forth hereinabove from the same county commissioner's district as the vacating member, for the period of the unexpired term of the office being filled.

(5) **Organization.** At its first meeting after the passage of the ordinance codified in this chapter, and the appointment of its membership, the planning commission shall organize itself by electing a chairman and vice-chairman to serve until the expiration of the calendar year 1975. Thereafter, the planning commission shall hold not less than one meeting per month; provided, that if no matters within its jurisdiction are pending, the meeting may be canceled. At a planning commission meeting in December of each year, the planning commission shall reorganize by electing a chairman and vice-chairman to serve for a period of one year, commencing January 1st of the following year. The planning commission may appoint standing or special committees to which may be assigned specific responsibilities and authority, which shall make no recommendations except to the planning commission.

(6) **Meetings, Quorum.** Five members of the planning commission shall constitute a quorum. All actions of the planning commission shall be determined by a majority vote at a meeting which is in compliance with the Washington State Open Meetings Act, at

2.10.040

which a quorum is present, except in the event any state law or county ordinance shall require a vote larger than majority, such provision shall govern.

(7) Powers and Duties – Conduct of Hearings. The powers and duties of the planning commission shall be such as are prescribed by Chapter 36.70 RCW, as amended, and other applicable laws of the state; and the planning commission shall also perform such other duties as are not inconsistent with the laws of the state, at the direction of the board of county commissioners. The planning commission shall also conduct such hearings as are required by said Chapter 36.70 RCW, and as to all other applicable laws of the state and Chapter 2.25 LCC, and shall make findings of fact and conclusions therefrom which shall be transmitted to the planning department for transmittal to the board of county commissioners or examiner, with such comments and recommendations as the planning department shall deem necessary. [Ord. 1157, 1998; Ord. 1147, 1995; Ord. 1042 Art. III, 1975]

2.10.040 Financing and planning.

(1) Financial Obligations and Expenditures. No financial obligation or expenditure shall be incurred by either the planning department or the planning commission, except as are expressly authorized in advance by the board of county commissioners as by law provided. Appropriations for the operation of both planning department and planning commission shall be separately identified, but office accounting and records shall be kept by the planning department, as a section of the department of public services.

(2) Planning Procedures. The director of planning shall establish such rules and procedures as shall assure thorough and expeditious handling and disposition of such matters as may be of concern to the planning department, within constitutional, statutory and ordinance limitations. The planning commission shall adopt its own internal rules and procedures to govern the conduct of its own internal affairs

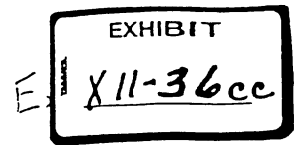
and proceedings within constitutional, statutory and ordinance limitations. [Ord. 1157, 1998; Ord. 1042 Art. IV, 1975]

APPENDIX 2



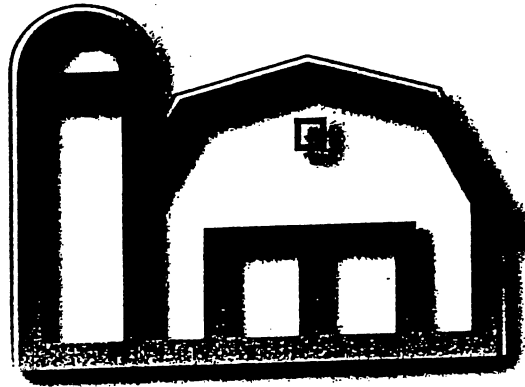
United States
Department of
Agriculture

National Agricultural
Statistics Service



1997 Census of Agriculture

AC97-A-47



Washington State and County Data

Volume 1, Geographic Area Series
Part 47

Table 1. County Summary Highlights: 1997—Con.

(For meaning of abbreviations and symbols, see introductory text)

Item	Jefferson	King	Kitsap	Kititas	Klickitat	Lewis	Lincoln	Mason
Farms.....number..	144	1 091	359	757	530	1 117	707	211
Land in farms.....acres..	13 091	41 653	19 129	177 815	588 732	117 677	1 375 869	19 988
Average size of farm.....acres..	91	38	53	235	1 111	105	1 946	95
Median size of farm.....acres..	40	11	11	47	153	45	1 447	15
Estimated market value of land and buildings ¹ :								
Average per farm.....dollars..	269 645	378 684	266 736	539 603	626 995	387 139	1 078 654	302 155
Average per acre.....dollars..	3 573	8 839	5 591	2 433	579	3 635	537	4 100
Estimated market value of all machinery and equipment ¹ :								
Average per farm.....dollars..	18 568	35 503	26 365	60 923	46 923	32 594	139 185	16 539
Farms by size:								
1 to 9 acres.....	28	414	136	92	35	96	20	62
10 to 49 acres.....	51	501	168	289	127	482	30	97
50 to 179 acres.....	46	124	48	180	118	378	45	32
180 to 499 acres.....	16	41	5	104	91	141	90	16
500 to 999 acres.....	2	10	—	49	9	103	1	1
1,000 acres or more.....	1	1	2	43	110	11	419	3
Total cropland.....farms..	110	742	247	628	454	935	652	157
Harvested cropland.....farms..	8 076	24 243	5 594	87 299	186 136	61 720	876 196	6 687
Irrigated land.....farms..	86	502	176	489	365	727	574	123
Market value of agricultural products sold.....\$1,000..	2 542	10 591	3 724	58 409	89 643	36 370	489 505	4 710
Average per farm.....dollars..	36	225	77	621	176	127	120	44
Crops, including nursery and greenhouse crops.....\$1,000..	847	3 291	366	75 859	20 239	5 765	47 984	382
Livestock, poultry, and their products.....\$1,000..	4 321	93 791	12 233	79 634	33 231	82 778	107 808	13 365
Average per farm.....dollars..	30 007	85 968	34 074	105 196	62 701	74 108	152 486	63 340
Farms by value of sales:								
Less than \$2,500.....	58	468	193	214	172	442	105	100
\$2,500 to \$4,999.....	26	172	58	88	59	188	20	35
\$5,000 to \$9,999.....	22	138	38	96	68	168	36	21
\$10,000 to \$24,999.....	20	104	33	113	70	143	55	30
\$25,000 to \$49,999.....	4	54	18	63	47	44	53	11
\$50,000 to \$99,999.....	6	35	10	69	47	35	87	7
\$100,000 or more.....	8	120	9	114	67	97	351	7
Total farm production expenses ¹\$1,000..	3 021	79 834	10 740	63 172	27 669	64 558	72 939	10 865
Average per farm.....dollars..	20 978	73 175	29 916	83 451	52 010	57 847	103 021	51 250
Sh return from agricultural sales for the unit (see text) ¹farms..	144	1 091	359	757	532	1 116	708	212
Average per farm.....\$1,000..	1 327	14 625	937	17 600	4 072	18 564	33 761	1 922
Average per farm.....dollars..	9 218	13 405	2 611	23 249	7 655	16 634	47 685	9 068
Operators by principal occupation:								
Farming.....	49	472	125	357	281	498	564	101
Other.....	95	619	234	400	249	619	143	110
Operators by days worked off farm:								
Any.....	82	613	233	434	296	598	239	118
200 days or more.....	55	400	156	304	180	416	109	74
Livestock and poultry:								
Cattle and calves inventory.....farms..	81	406	141	375	254	694	252	76
Beef cows.....number..	4 325	32 806	1 951	37 002	26 180	34 264	32 302	2 218
Milk cows.....farms..	71	252	109	295	206	533	232	59
Cattle and calves sold.....number..	1 625	2 370	953	15 359	13 399	7 916	(D)	1 034
Hogs and pigs inventory.....farms..	8	74	8	15	18	75	2	6
Hogs and pigs sold.....number..	730	16 897	15	552	1 483	8 360	(D)	27
Sheep and lambs inventory.....farms..	78	353	92	372	243	608	243	65
Sheep and lambs sold.....number..	2 159	14 528	(D)	42 904	13 536	19 599	18 565	855
Layers and pullets 13 weeks old and older inventory (see text).....farms..	6	47	21	25	21	57	15	19
Broilers and other meat-type chickens sold.....farms..	101	595	84	424	462	518	947	134
Sheep and lambs inventory.....number..	1	36	17	25	22	44	16	18
Layers and pullets 13 weeks old and older inventory (see text).....farms..	(D)	554	247	780	419	1 321	1 481	480
Broilers and other meat-type chickens sold.....farms..	8	67	25	49	45	60	23	10
Selected crops harvested:								
Corn for grain or seed.....farms..	80	1 211	421	2 360	2 760	1 106	1 072	113
Wheat for grain.....farms..	14	112	58	28	31	81	22	19
Barley for grain.....farms..	(D)	3 210	1 278	432	724	(D)	(D)	440
Potatoes, excluding sweetpotatoes.....farms..	1	14	—	—	3	21	3	2
Hay—alfalfa, other tame, small grain, wild, grain—silage, green chop, etc. (see text).....farms..	(D)	7 406	—	—	72	11 358 040	129	(D)
Selected crops harvested:								
Corn for grain or seed.....farms..	1	5	—	1	1	—	3	—
Wheat for grain.....bushels..	(D)	30	—	(D)	(D)	—	564	—
Barley for grain.....bushels..	(D)	2 698	—	(D)	(D)	—	68 477	—
Potatoes, excluding sweetpotatoes.....farms..	—	2	1	58	117	19	471	—
Hay—alfalfa, other tame, small grain, wild, grain—silage, green chop, etc. (see text).....farms..	—	(D)	(D)	5 224	40 401	1 104	355 317	—
Barley for grain.....bushels..	—	(D)	(D)	396 134	1 306 608	62 398	23 096 865	—
Potatoes, excluding sweetpotatoes.....farms..	—	—	—	7	38	24	283	—
Hay—alfalfa, other tame, small grain, wild, grain—silage, green chop, etc. (see text).....farms..	—	—	—	135	7 464	873	102 415	—
Potatoes, excluding sweetpotatoes.....bushels..	—	—	—	12 687	351 563	49 923	7 312 012	—
Hay—alfalfa, other tame, small grain, wild, grain—silage, green chop, etc. (see text).....farms..	1	6	4	5	3	—	7	—
Potatoes, excluding sweetpotatoes.....acres..	(D)	2	2	442	(D)	—	771	—
Hay—alfalfa, other tame, small grain, wild, grain—silage, green chop, etc. (see text).....farms..	(D)	548	535	153 560	(D)	—	428 495	—
Grain—silage, green chop, etc. (see text).....farms..	59	215	67	446	256	562	235	45
Grain—silage, green chop, etc. (see text).....acres..	2 741	7 253	1 375	45 655	35 540	24 463	24 902	2 113
Grain—silage, green chop, etc. (see text).....tons, dry..	6 915	22 442	1 782	202 534	55 567	53 694	66 439	4 841
Grain—silage, green chop, etc. (see text).....farms..	8	71	18	44	16	23	6	11
Grain—silage, green chop, etc. (see text).....acres..	10	1 436	29	4 437	(D)	2 341	(D)	150
Grain—silage, green chop, etc. (see text).....farms..	4	41	27	41	65	47	5	10
Grain—silage, green chop, etc. (see text).....acres..	5	115	43	2 236	2 541	154	85	15

See footnotes at end of table.

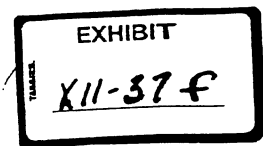
APPENDIX 3

MOTION:

Since Lewis County will be the first agricultural resource lands case before the Hearings Board since the State Supreme Court's "Soccer Fields" decision it is essential that our work be done as thoroughly and completely as possible and is consistent with both the Act and that decision.

Therefore, I move the Staff be directed by the Planning Commission to prepare a technical report to supplement the compliance work for agricultural resource land done by the Planning Commission over the last 9 months.

Said report shall be submitted to the Planning Commission within one month of this date. Further, said report shall be prepared by Staff with the oversight of Mr. Mackie and shall meet with his approval prior to submission.



Notes from Planning Commission Meeting on June 10, 2003- 7:00 p.m.
Newaukum Grange in Chehalis

Subject: Rezones
Designation and Classification of Resource Lands

Planning Commissioners Present: Robert Kraemer, Tom Cleary, Diana Leber-Levine, Mark Bolender, Fred Breed, Bill Russell, Kyle Heaton and Lyle Hojem.

County Commissioners Present: Dennis Hadaller and Richard Graham.

Staff Members Present: Robert Johnson, Erika Conkling, Mike Zengel.

Consultants Present: Mike McCormick and Sandy Mackie.

Public Present: please see sign-in sheet.

Handouts/Materials Used:

- Agenda
- Minutes from May 22, 2003
- Minutes from May 27, 2003
- Minutes from May 29, 2003
- Letter of Resignation from Steve Ryan
- Memo from Robert Johnson re: Supplemental Materials (Panesko and Knutsen)
- Draft Transmittal Document regarding Agricultural Resource Lands Mapping
- Correspondence from Bill and Adele Carlson
- Memo from Planning Staff and Consultants re: Criteria for consideration of rezone applications
- Summary of 2002 rezone requests June 10, 2003
- Handout from Dave Merzoian
- Handouts from Frances Grove
- Handouts from Dorothy Winters

1. **Call to order.** Fred Breed called the meeting to order at 7:05 p.m.
2. **Introductions.** The members of the Planning Commission and staff introduced themselves for the record.
3. **Correspondence.** Adele and Bill Carlson submitted an item of correspondence.
4. **Work Session**
 - A. **Approval of the minutes**
 - i. May 22, 2003.
 - ii. May 27, 2003.
 - iii. May 29, 2003.Approval of the minutes was tabled until the next meeting because packets were received too late for all Planning Commission members to review them.
 - B. **Workshop on testimony from Public Hearing on May 29, 2003.** Discussion of this issue was tabled until after rezones were discussed.
 - C. **Workshop on Rezoning Issues.**
The following rezones were discussed:

52- The issues about surrounding critical areas were discussed. It was moved to approve the staff recommendation. Diana Leber-Levine commented that it might be possible to create a zoning

boundary along natural features. There was discussion of this possibility. Diana Leber-Levine remembered that she had previously recused herself from this discussion and stepped aside for the remainder of the conversation. Mark Bolender asked why the whole area could not be zoned at a higher density. Mike McCormick noted several reasons for keeping the designation RDD-20. The motion to approve the staff recommendation carried.

56- Bob Johnson explained that staff carefully examined this application and could not find any substantial reason for the approval of the request. Mark Bolender moved to zone the area RDD-10. The motion was not seconded. Kyle Heaton asked staff for the criteria for RDD-10 designation. Mike McCormick commented that the designation criteria come from the Comprehensive Plan and read them. Sandy Mackie made additional comments on the designation criteria. Fred Breed allowed David Merzoian to speak and handout some additional information. David Merzoian asked that if his request was denied he would like to see the reasoning in writing. Kyle Heaton asked that the Planning Commission examine the 1999 aerial photo of the area and the asked the applicant if there had been additional development since that time. The applicant noted that there have been lots of record created and there are now between seven and nine homes out there today. He also noted that low-density development does not work well to support the local school district. Kyle Heaton noted that RDD-10 development in the area of the request is a good fit with the block of land that had fewer critical areas and is well served by roadways. He moved to consider an RDD-10 block. The motion carried. Staff agreed to bring back a logical block of RDD-10.

77- Bob Johnson noted that staff had prepared a recommendation for changing a block of zoning. It was moved to accept the staff recommendation. Motion carried.

97- Staff summarized the discussion on this application so far. Mark Bolender noted that the surrounding areas is residential but if the property is not rezoned it may result in an eyesore. Bill Russell asked for clarification on the staff recommendation. The staff recommendation is to keep the zoning designation RRC. There was discussion of the current uses on the lots in the LAMIRD (Limited Areas of More Intense Rural Development). Bill Russell moved to accept the staff recommendation. There was discussion of changing the area to a Type II LAMIRD. Mike McCormick suggested having staff bring back an analysis of what uses would be allowed in the current LAMIRD and an analysis of a possible change in the LAMIRD type. Bill Russell amended his motion to reflect this suggestion. Diana Leber-Levine and Kyle Heaton discussed whether or not this would constitute a spot zone. The motion carried to have staff bring more information back at the next meeting.

Packwood STI (Small Town Industrial) zoning change- Bob Johnson explained the staff recommendation to rezone the area STMU (Small Town Mixed Use). There was discussion on whether or not industrial uses would still be allowed. It was moved to approve the staff recommendation. The motion carried based upon the fact that STMU zoning more accurately accounts for the mix of uses already present in the area.

116- Frances Grove was allowed to speak to her application. She handed out a set of maps and materials to illustrate her case for a rezone to RDD-5. She noted that the land was free from critical areas and endangered habitat areas. She noted that she was requesting the rezone to keep the property in the family homes, agriculture and forestry. It was moved for staff to consider this and bring it back next time. Motion carried.

Break 8:12, reconvened at 8:29 p.m.

Sandy Mackie explained that Bob Johnson prepared maps showing areas being considered for rezone for the public hearing. Bob Johnson explained the areas the Planning Commission was considering for rezone on each panel. Map 1 is the western portion of the county. Kyle Heaton moved to forward map one for the public hearing. The motion carried. Map 2 shows the I-5 corridor (it was noted there is some overlap). Kyle Heaton moved to forward map two for public

APPENDIX 4

**LEWIS COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT**

350 N. Market Blvd. Chehalis, WA 98532

Divisions
Permit Center
Environmental Services * Planning
Building & Fire Safety * Code Enforcement

(360) 740-1146

TRANSMITTAL

TO: Board of County Commissioners

FROM: Lewis County Planning Commission
Tom Cleary, Chairman

XC: Mike McCormick
Sandy Mackie
Doug Jensen

DATE: July 22, 2003

SUBJECT: Recommendation adopted by the Planning Commission following their July 8, 2003 meeting and a public hearing held May 29, on proposed amendments to the Lewis County Comprehensive Plan Agricultural Resource Land designations and to Lewis County Code Chapter 17.200.020(19), Agricultural Resource Land maps.

SEE ATTACHED RESOLUTION

BEFORE THE LEWIS COUNTY PLANNING COMMISSION

IN RE:) RESOLUTION 03-03
RECOMMENDATION OF THE PLANNING COMMISSION)
TO THE BOARD OF LEWIS COUNTY COMMISSIONERS)
TO AMEND THE LEWIS COUNTY COMPREHENSIVE)
PLAN AND LEWIS COUNTY CODE CHAPTER)
17.200.020(19) AGRICULTURAL RESOURCE LAND MAP)
DESIGNATIONS)

WHEREAS, The Western Washington Growth Management Hearings Board, in their Final Order and Decision of July 10, 2002, directed the County to reexamine the designation of agricultural lands in light of the criteria in RCW 36.70A.060 and WAC 365-190-050; and

WHEREAS, The Planning Commission held public meetings commencing in August, 2002 and ending in July, 2003 to consider the designation of agricultural lands in Lewis County in light of the criteria in RCW 36.70A.060 and WAC 365-190-050; and

WHEREAS, The Planning Commission heard from citizens engaged in commercial agriculture, processing, agricultural finance, and from public agencies involved in agriculture concerning the nature, long-range prospects and trends in commercial agriculture in Lewis County; and

WHEREAS, Public testimony was taken at a public hearing held before the Planning Commission on May 29, 2003 concerning proposed designation of agricultural resource lands; and

WHEREAS, The Planning Commission finds that the amendments, as recommended, meet the requirements of the Growth Management Act, are in compliance with the Comprehensive Plan and consistent with Lewis County development regulations, NOW, THEREFORE,

IT IS HEREBY RESOLVED, That the Lewis County Planning Commission recommends the amendments to the Lewis County Comprehensive Plan and Lewis County Code Agricultural Resource Lands map designations and Chapter 17.200.020(19) agricultural resource land designation maps, attached as Attachment A. The Planning Commission also recommends that any land removed from resource land designation as a result of the recommended resource land designation amendment be zoned consistent with the surrounding property, and orders staff to transmit the proposed amendments and this recommendation to the Board of Lewis County Commissioners that said amendments be considered and adopted by the Board.

DATED THIS 22nd day of July, 2003

LEWIS COUNTY PLANNING COMMISSION

Chairman

**LEWIS COUNTY PLANNING COMMISSION
TRANSMITTAL TO
THE LEWIS COUNTY BOARD OF COUNTY COMMISSIONERS
JULY 22, 2003**

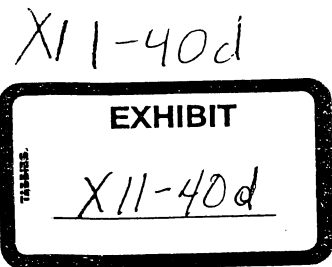
**AGRICULTURAL RESOURCE LAND DESIGNATION AMENDMENTS
TO
THE LEWIS COUNTY COMPREHENSIVE PLAN AND LEWIS COUNTY CODE
CHAPER 17.200.020(19)**

ATTACHMENT A

**Lewis County Planning Commission Hearing Draft
Designation of Agricultural Resource Lands
Public Hearing Date: May 29, 2003**

MAP NO.	WORK MAP/ PANEL NO.	TOWNSHIP- SECTION- RANGE	PROPOSED CHANGES
1	1-D	14-4w-5/6	Axtell: designate Cl.A in part; Southard: designate Cl. A; Hakola: designate Cl A in part.
2	3-B	12-4w-11	Banjuh: designate Cl.A; Lindelof: designate Cl. A in part; Mallonee: designate Cl A; Allen: remove from Cl. A designation.
3	6-B	13-3w-10/11/12	Cloquato Farms TPN 18810-1-2 designate Cl. A.
4	7-D	12-2W	Carlson, Smith and property in various ownerships removed from Cl. A. designation.
5	8-B	11-2W-3	Roth property designated Cl. A.
6	8-C	11-2w-15/17	Zion and McNight properties designated Cl. A.
7	10-B	13-1W-16/17	Anderson and Craggen properties removed from Cl. A. designation; Starkman property designated Cl. A.
8	11-A	12/13-1w/2w-1/2/25/32	Thode property designated Cl. A; Balke, Janke, Nelson and Carlson properties removed from Cl. A. designation.
9	11-B	12-2w-35	160 acre designation removed from Cl. A. designation.
10	11-D	12-1w/1e-13/17/24	Kinsman property: designate Cl. A. in part.
11	12-A	12/11- 1W-11/35	Kirkendoll: designate Cl. A; IFA Nurseries: designate Cl. A; Dorn: designate Cl. A in part; Secrest: designate Cl. A in part.
12	12-D	11-1W-14	Olson property designate Cl. A. in part.
13	14-A	13-1e/2e- 15/20	Thode and Knutsen properties designated Cl. A.
14	14-B	13-2e-24	Studhalter: remove from Cl. A designation.
15	15-A	12-1e-12	McDaniel property designated Cl. A. in part.
16	15-C	12-2e-11	Anderson and DeGoede property designated Cl.A.; Hadaller property designated Cl.A. in part.
17	15-D	12-2e-11	DeGoede property designated Cl.A.

The attached maps are copies of the working maps used to review the designation of Agricultural Resource Lands during Planning Commission workshops. Each map shows the proposed changes that will be taken to public hearing on May 29, 2003 before the Planning Commission. In addition the above chart summarizes the proposed changes. The full set of working maps are printed in color and available for review during business hours at the Lewis County Planning Department at 350 N. Market Blvd. in Chehalis (360) 740-2637.



Notes from Planning Commission Meeting on July 22, 2003- 7:00 p.m.
Newaukum Grange in Chehalis

Subject: Public Hearing Amendment LCC 17.15 UGA's - Cities
Work Session: Amendment LCC 17.15

Staff Presentation on Agricultural Resource Land Designation
Staff Presentation on Urban Growth Area amendment applications

Planning Commissioners Present: Robert Kraemer, Tom Cleary, Diana Leber-Levine, Bill Russell, Fred Breed, Kyle Heaton, Mike Zengel, Mark Bolender, and Lyle Hojem.

County Commissioners Present: Richard Graham.

Staff Members Present: Robert Johnson, Craig Swanson, Rick Turnbull, Erika Conkling

Consultants Present: None.

Public Present: please see sign-in sheet.

Handouts/Materials Used:

- Agenda
- Hearing Draft of amendments to LCC 17.15
- Transmittal- PC July 8, 2003 Recommendation – Agricultural Resource Land Designations and LCC 17.200.020(19).
- Transmittal – PC July 22, 2003 Recommendation – Proposed amendments to LCC 17.15 Urban Growth Areas – City.
- Draft Inter-local Agreement- County and City of Centralia – Joint Management of City's Urban Growth Area
- Public Hearing Draft – Proposed Amendment to LCC 17.17 – July 22, 2003
- LC Planning Commission Meeting Minutes, Special Session, April 28, 1998 (Handed out by Erika Conkling)
- City of Centralia, Proposed Urban Growth Area Expansion, Response to Lewis County Staff Recommendation, July 22, 2003 (Handed out by Terry Calkins).
- Re-Zone Alternative for Grove Property, proposed by Mike Zengel, July 22, 2003.
- Staff Report on UGA amendment applications and draft letter to applicants

1. **CALL TO ORDER.** Tom Cleary called the meeting to order at 7:03 p.m.
2. **INTRODUCTIONS.** The members of the Planning Commission and staff introduced themselves for the record.
3. **PUBLIC HEARING – AMENDMENT TO LEWIS COUNTY CODE CHAPTER 17.15, URBAN GROWTH AREAS – CITIES.**
 - a. Staff Presentation of Hearing Material – Bob Johnson pointed to the materials in the handout packet including the transmittal and draft resolution of the material upon which tonight's hearing is based. The purpose is to hear public comments/testimony on the proposed amendment to LCC 17.15. This involves the process and development regulations that are used within the Urban Growth Area of the City of Centralia. The City of Centralia desires to enter into an inter-local agreement with the county that will specify the process for handling development permits within the UGA and the fees associated. Also it would guide the dispersal of road funds and other funds through the taxes to the county to recoup costs for infrastructure that are expended in the UGA. Bob briefly outlined the content of the proposed amendment. See the written materials included in the record.
 - b. Question and Answer Session. One question was raised about a retainment schedule for capital projects constructed by the county or is it all to be negotiated? A retainment schedule only deals with the road funds. It is a seven-year deal.

- Gene Butler asked about the Port of Centralia's future ability to declare industrial lands without further action by the county. Bob Johnson responded that this would add no jurisdictional authority for the Port. "The ports do not have zoning authority," said Kyle Heaton.
- c. Public Hearing – testimony from the public. No one offered testimony.
 - d. Close public Hearing. At 7:13 p.m.

The agenda was modified to next discuss item 5b because some city officials had other meetings to attend this evening.

WORK SESSION: Planning Commission on staff recommendation dealing with Urban Growth Area amendment applications.

At the July 8, 2003 meeting, Planning Commission deliberations on the staff recommendation on proposed changes to LCC dealing with UGAs was tabled to give the PC more time to study the materials. The Staff recommendation on all of the various requests by the cities was: the cities have not yet prepared an adequate needs analysis consistent with the RCW and WAC (needed by the Planning Commission to review for their action), so the staff recommends that any action on UGA amendment requests be tabled until the needs analyses have been prepared. There was some discussion about which of the cities had responded with information at different meetings. The amount of detail necessary was questioned. There was discussion about the interface of the UGAs for Chehalis and Napavine. Bob Johnson referred to WAC 365.195.335 for the needs analysis list of criteria and requirements and explained these items. Discussion followed about Chehalis/Napavine UGAs.

Terry Calkins from the City of Centralia distributed a document as their response to the staff recommendation. Mark Bolender asked that the county take action on a Napavine property immediately. Bob Johnson pointed out that the requirements for "adequate" needs analyses have been recognized since the county was dealing with interim UGAs in the 1994-1998 period. Erika Conkling passed out minutes of a Planning Commission special session dated April 28, 1998. Kyle stated that there should be discussion, planning, and interaction between the county and the cities, i.e. the county should have asked specifically for a needs analysis (and its content) with each request/application.

The Planning Commission passed a motion unanimously that staff notify the concerned cities on what is required for a needs analysis and whatever else is needed for their requests to go forward.

The Planning Commission passed a motion unanimously to approve the City of Mossyrock's request for the area around the protection area around their well head and water tower.

Terry Calkins believes Centralia gave an appropriate analysis for their request and they will look forward to working with the county. He also had comments about a rural island agricultural area in an UGA and showed a map.

Nan Crocker, Mayor, City of Mossyrock said they had put in a needs assessment with their request. She is perplexed that the county has allowed several septic/sewer permits within the well protection zone.

4. WORK SESSION – NEW BUSINESS

- a. Correspondence (If any) None
- b. Approval of Minutes from last meeting. (July 8, 2003) The minutes were unanimously approved.

- c. Work session on proposed amendment to LCC 17.15. Staff recommendation is that the Planning Commission transmit the recommendation to the BOCC to adopt as written since there was no public testimony. This was approved unanimously by the Planning Commission.

5. WORK SESSION – OLD BUSINESS

- a. Staff Presentation on Agricultural Resource Land designation. Bob Johnson reviewed from the last meeting that the Planning Commission voted to make a recommendation to the BOCC that they adopt the resource land designations that had been before public hearing after months study public involvement and testimony. Bob Johnson gave a brief summary of the history of the process that was used. The Planning Commission finally had a public hearing on recommended agricultural lands designations. Bob pointed out the transmittal of the final Planning Commission recommendation in tonight's handout materials. The Planning Commission unanimously approved the transmittal as written.
- b. Grove rezone application discussion and possible action. Bob Johnson noted briefly #116 (the Grove request) was tabled until further information could be gathered. Bob Johnson presented an overview of the rezone request. He pointed out on a map the present zoning boundaries. He observed probable wetlands in the field and showed their location on the map. He described the topography and local human and geographic features in the neighborhood being considered. Bob Johnson ended with a recommendation that the area be rezoned as he had diagrammed on the map (mostly RDD-10).

Mike Zengel related his knowledge of the Grove property soils from a field visit he made with "Someone" (un-identified) who he said went to the COE wetlands class. He did not see any wetlands except for the severely entrenched streams that cross the property. There was no written materials presented. He also related flood zone information from the FEMA maps.

Frances Grove asked why their property is any different than their neighbors who are zoned as RDD-5. Same soils. She would like to have the ability to "break that up" in the future. She gave her view of their property, family history, and its potential for future subdivision. She would like RDD 5 zoning for her 160 acres. She has water rights but does not know the details. Bob Johnson explained the current state law about subdividing without water rights and the limitation of six lots.

Planning Commission moved to accept the staff recommendation for this rezone. Mike Zengel proposed an alternative to the staff recommendation. He passed out a map and packet of information. It would involve and larger RDD-5 zone.

The Planning Commission amended the motion to conform to Zengels' version. Without further discussion, the Planning Commission approved the amended motion.

6. GOOD OF THE ORDER/PUBLIC COMMENT

The Mossyrock Mayor and Bob Johnson will get together to work on documenting their request that was approved tonight.

7. ADJOURNMENT

The meeting was adjourned at 7:55 p.m.

APPENDIX 5

LEWIS COUNTY COMMISSIONERS



Lewis County, WA • Since 1845

LEWIS COUNTY COURTHOUSE
351 NW NORTH STREET
CHEHALIS, WA 98532-1900
(360) 740-1120 • FAX: (360) 740-1475
TDD: (360) 740-1480

ERIC JOHNSON
First District

RICHARD GRAHAM
Second District

DENNIS HADALLER
Third District

Connie Robins, CPA
Chief Administrative Officer

August 8, 2003

Tom Cleary
Planning Commission Chair
350 N. Market Blvd.
Chehalis, WA 98532

Sheila Unger
Administrative Coordinator

EXHIBIT

X11-419

Dear Mr. Cleary:


The Board of County Commissioners appreciates the efforts of the entire Planning Commission in their work on Agricultural Resource Lands. A transmittal of the Planning Commission's recommendations regarding the designation of Agricultural Resource Lands has been received. In June the Planning Commission directed staff and consultants to prepare a report on Agricultural Resource Lands. This report contains an alternate set of recommendations for Agricultural Resource Land designation.

Members of the Board, the Planning Commission, staff and consultants toured the County to review the Planning Commission's work. The group found that the recommendations of the Planning Commission fairly accurately accounted for the lands currently being used in agriculture. However, recent case law and past decisions of the Western Washington Growth Management Hearings Board suggest that additional land may need to be designated to protect long-term commercially significant agricultural activities in Lewis County.


The Board of County Commissioners believe that the report and recommendations prepared by the staff have merit and should be taken to public hearing by the Planning Commission. Lewis County must file a report on the designation of Agricultural Resource Lands with the Western Washington Growth Management Hearings Board by September 9, 2003. Staff has prepared a hearings schedule to meet this deadline. Please hold a public hearing on this matter and submit a new recommendation for Agricultural Resource Land designation as soon as possible.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY WASHINGTON


Eric Johnson, Chairman


Richard Graham, Member


Dennis Hadaller, Member

Cc: Department of Community Development

Notes from Planning Commission Meeting on August 12, 2003- 7:00 p.m.
Newaukum Grange in Chehalis

**Subject: Review Material for Public Hearing to be Conducted
on August 26 on Agricultural Resource Land Designations**

X11-41f
EXHIBIT

Planning Commissioners Present: Robert Kraemer, Tom Cleary, Diana Leber-Levine, Bill Russell, Fred Breed, Kyle Heaton, Mike Zengel, Mark Bolender, and Lyle Hojem.

Staff Members Present: Robert Johnson, Craig Swanson, and Rick Turnbull

Consultants Present: Mike McCormick and Sandy Mackie

Public Present: please see sign-in sheet.

Handouts/Materials Used:

- Agenda
- BOCC letter of August 8, 2003 to Tom Cleary, Planning Commission Chairman
- "Agriculture in Lewis County," A Preliminary Report to the Lewis County Planning Commission for Purposes of Public Hearing, with three maps titled "Planning Commission Public Hearing Draft, August 26, 2003" Figures 1a, 1b, and 1c. Also includes a tabulation of acres titled "Proposed Designated Agricultural Land by Map Panel."
- Letter from A.W. Mackie to Planning Commission dated August 12, 2003 Re. Agricultural Resource Land Blocks
- Notes from Planning Commission Meeting July 22, 2003

1. **CALL TO ORDER.** Tom Cleary called the meeting to order at 7:06 p.m.
2. **INTRODUCTIONS.** The members of the Planning Commission introduced themselves for the record.
3. **CORRESPONDENCE (if any)** - None
4. **WORK SESSION**
 - A. **Approve meeting notes from last meeting.** The notes from the July 22, 2003 meeting were approved by the Planning Commission.

B Review material for public hearing to be conducted August 26, 2003 on Agricultural Resource Land Designations. Bob Johnson outlined the purpose of the meeting: Respond to the BOCC letter of August 8, 2003 included in the packet. Sandy Mackie introduced and recapped the process the Planning Commission has been through of designating resource lands and preserving them. He spoke from the paper included in the packet and titled "Agriculture in Lewis County."

I. THE DUTY

He spoke about the duties of local jurisdictions.

A. Legislative Requirements and Regulatory Guidelines

He summarized the guidance from law in RCW and WAC. He pointed out the soil type maps from the SCS that were handed out. He spoke about the factors of agricultural land that are to be considered in designating agricultural lands.

B. Court Guidance

Mackie summarized the Court Guidance for the process including the Growth Hearings Board decisions (pages 4 thru 8). Sandy Mackie then spent some time elaborating the summary of duties of the county on page 7 of the paper

II. The Findings

Page 8. Mr Mackie spoke from the paper providing expanded explanation. He explained that Lewis County does not have a weather pattern that is conducive to successful farming in the long term. He talked

about rotation of grass crops on pasture and hay land. Some former dairies are turning to feed lot operations while other dairy operations are moving to eastern Washington and other states. He summarized the economic return from farming. The small "hobby farming" will continue regardless of the zoning. Then he spoke about farm size and how it affects commercial significance. Sandy Mackie highlighted the trends in various product types, etc. He spent some time with dairy farms and cattle farms for beef. Field crops have declined significantly. Mr. Mackie explained the dependency of poultry farming on water and water rights. Water is short for expansion of poultry farming in Lewis County. There are also waste problems.

Define the Critical mass, etc. Page 12. The main points are well presented in the paper. . . .
Identify commercial etc. See the explanations in the paper that were presented by Mr. Mackie.
Identify the needs of farmers and lenders, etc. Mackie spoke at length about "farm centers" (see page 15).
Sandy Mackie then summarized the recommendations found on pages 16 through 18 of the paper. .

Sandy Mackie pointed out that Bob Johnson and Mike McCormick produced four large maps displayed on the wall, which they will explain later on.

Questions, Answers, Discussion: Lyle Hojem commented on Sandy Mackie's presentation. He complimented the summary that Mackie presented. He saw two changes from what the Planning Commission has done over the past 16 months in formulating their recommendation, the concepts of "Blocks" and "Farm Centers." He sought an answer to what the Planning Commission had done wrong the first time. Mackie said we are being held to a very high standard by the Western Washington Growth Management Hearings Board (WWGMHB) and must show our work in great detail. Lyle wonders why the Planning Commission was not given better (the right) instructions months ago. Sandy Mackie and Mike McCormick explained what extra work was needed to pass the Growth Board Standard. Lyle asked that we decide what went wrong here because he will not go through this again. Bob Kraemer expressed his views of dairy farming moving out of western Washington and the state as well. Lyle returned to more discussion of Blocks and Farm Centers. Mackie explained the views expressed by Lyle Heimbigner of USDA (See the letter that was handed out) and how those views supported the ideas of "blocks" and "farm centers."

BREAK at 8:14 P.M. The meeting reconvened at 8:33 P.M.

Bob Johnson and Mike McCormick explained the four big maps posted on the wall. The three small maps distributed to the Planning Commission tonight are the same material as the four large maps on the wall. Bob Johnson explained the source materials that went into making the maps. Some recommendations show removing some land from Agricultural designation. Bob explained the reasoning behind the recommended changes from the previous designation of Agricultural lands by the Planning Commission. Many of the areas stayed the same but there are significant additions and deletions. This map would go before public hearing and further deliberation of the Planning Commission. Several areas of Class B lands were recommended for removal because Bob and Mike could not find sufficient reasons to support keeping them in. Bill Russell asked what zoning the deleted agricultural lands would fall in to. Bob said the underlying zoning.

Lyle Hojem asked about where the concept of Blocks came from. Bob Johnson explained, mentioning the relationship of water rights to the designation process. The Farm Bureau supports the idea of long-term protection of agricultural land by zoning agricultural land in blocks. Kyle Heaton expanded the discussion by asking about conflicting uses in the Boistfort Valley. Kyle takes issue with the concept of "farm centers." And blocking. He thinks this works to the disadvantage of the individual farmer. A spirited discussion ensued between Kyle Heaton and Sandy Mackie covering topics such as farm size and number of acres in the County. Mark Bolender asked if this report was being "cramped down" the throats of the Planning Commission. Mackie again explained the sources of the material that went into the paper he presented. The concept of blocking was also discussed between Bolender and Mackie about commercial/industrial uses. Fred Breed went to the letter from BOCC and read selected paragraphs to clarify the situation about the staff report (the 18-pager presented tonight) and taking it out for public hearing and further Planning Commission recommendation(s). Mark Bolender wondered why we are going to these extraordinary lengths to save a dying industry and not going to other sources of income for the economic well being of the County.

The calendar for decision-making was discussed. And more Planning Commission work will be needed after the public hearing. Bill Russell asked if there is any time to examine past "errors" or changes recommended by BOCC/staff. Bob Johnson said yes. A field trip was also suggested but did not receive much support. The material seen tonight is what the BOCC wants sent to public hearing. It was the Board's decision. This led to further discussion of what the Planning Commission is expected to do with this report and maps. Lyle questioned using Lyle Heimbigner's opinions as the sole report of an "expert" over other people in similar positions who have different opinions. What will go to hearing? The material presented tonight. Because it is new information and must go to public hearing and to have a Planning Commission recommendation on it for the BOCC to consider.

Fred Breed moved that the staff report along with the maps, along with the previous Planning Commission recommendation be presented at the public hearing scheduled on August 26. Lyle seconded. Discussion followed. The two approaches would be prominently labeled as the staff report vs. the Planning Commission recommendation. The Planning Commission will hold a workshop after the hearing to determine their final recommendation to the BOCC. **Motion carried.**

Old Business. Fred Breed moved that the UGA expansion on Cook's Hill as proposed by the City of Centralia for this comprehensive plan amendment cycle be approved as proposed by the City for the following reasons:

1. The city has adequately proven the need for its inclusion within their UGA.
2. The city has prepared plans for infrastructure to serve the area.
3. The area has been served for more than 30 years by first the 7-11 Water Company (a private water system) and more recently by the City of Centralia water system following their purchase of the 7-11 system
4. The proposal fits the parameters of the developing area.
5. The Planning Commission feels that the due diligence of the City of Centralia has met the requirements of GMA.

Kyle Heaton seconded. **Motion carried.**

Lyle Hojem moved that the entire contiguous ownership of the Betty Hamilton place located at the Rush Road intersection and northward from the interchange along the Hamilton Road which is currently located both the Urban Growth Areas of the cities of Napavine and Chehalis be placed entirely within the UGA of the City of Napavine. **Motion seconded and carried.** Diana Levine abstained from voting.

5. GOOD OF THE ORDER/PUBLIC COMMENT:

John Mudge: he is equally confused. The public is being sandbagged by an entirely new proposal. He hasn't a clue. Is there a separation between the staff and the Planning Commission.

Clay Hartzell: His property doesn't seem to fit the criteria for agricultural land, but he has water rights. He can't tell who recommended taking it out. He is in favor of taking it out of designation as agricultural land.

6. ADJOURNMENT at 9:36 P.M.

APPENDIX 6

**LEWIS COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT**

1st Street Blvd. Chehalis, WA 98532

Planning Commission Material

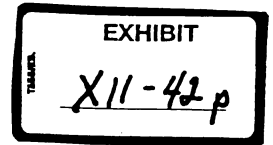
Date: 8/26/03

Permit Center
Environmental Services * Planning
Building & Fire Safety * Code Enforcement

(360) 740-1146

X11-42p

TRANSMITTAL



TO: Board of County Commissioners

FROM: Lewis County Planning Commission
Tom Cleary, Chairman TC

XC: Mike McCormick
Sandy Mackie
Doug Jensen

DATE: August 26, 2003

SUBJECT: Recommendation adopted by the Planning Commission following their August 26, 2003 Public Hearing and August 26, 2003 final workshop on proposed amendments of the Comprehensive Plan Resource Land maps and Chapter 17.200 LCC, Maps, to amend Agricultural Resource Lands designations.

SEE ATTACHED RECOMMENDATION

BEFORE THE LEWIS COUNTY PLANNING COMMISSION

IN RE:
RECOMMENDATION OF THE PLANNING)
COMMISSION TO THE BOARD OF LEWIS)
COUNTY COMMISSIONERS TO AMEND)
COMPREHENSIVE PLAN RESOURCE LANDS)
MAPS AND CHAPTER 17.200 LCC BASED ON)
RECONSIDERATION

TO: LEWIS COUNTY BOARD OF COUNTY COMMISSIONERS
FROM: LEWIS COUNTY PLANNING COMMISSION
DATE: AUGUST 26, 2003

The planning commission was asked to provide additional consideration for designation of agricultural land designations based on information from public hearings and from additional information from staff and the public. The planning commission received a report from staff, *Agriculture in Lewis County: A Preliminary Report to the Lewis County Planning Commission for Purposes of Public Hearing* on August 5, 2003 along with preliminary maps for consideration in designation of agricultural land of long-term commercial significance in Lewis County.

The planning commission held a supplemental workshop on August 12, 2003 to consider the additional material, and a public hearing on the additional material and proposals on August 26, 2003. Based on information received, the planning commission, by motion, took the following actions:

1. The planning commission defined the nature and needs of long-term commercially significant agricultural industry in Lewis County as the industry described in the *Preliminary Report* and refined in a supplemental report, *Agriculture in Lewis County: A Supplemental Report*, copies of which were approved by motion and are included as attachments to this recommendation.

2. The planning commission affirmed that the existing rules currently in place are sufficient for the protection of agriculture on rural lands.

3. The planning commission affirmed that the "Opt in" provisions of LCC 17.30 provide additional protection for agriculture in areas not presently designated for agricultural lands of long-term commercial significance.

4. The planning commission recommended adding farm home designations, allowing a 5-acre farm home designation.

5. The planning commission recommended adding a farm center designation on long-term commercial lands to provide additional income potential for farmers, consistent with historical and traditional practices in Lewis County, as a means to protect the financial viability of the farm and farm families.

6. The planning commission mapped land appropriate for designation as agricultural land of long-term commercial significance. The four maps, amended to reflect the final recommendation,

and a summary showing current and recommended acreage, were approved by motion and are attached.

FINDINGS IN SUPPORT OF THE RECOMMENDATION:

1. The *Preliminary Report* and *Supplemental Report* have been subject to a great deal of discussion and controversy. As a whole said reports accurately reflect the present and future condition and needs of long-term "commercially significant" agriculture in Lewis County.

2. The maps designating lands as long-term commercially significant agricultural lands, as amended and approved, designate irrigated and non irrigated lands with prime soils, bottom lands, and other lands sufficient to serve the needs of the Lewis County agricultural industry for the present and foreseeable future. Soils were considered, as were other elements and nature of the industry.

3. The lands removed from the 1996 designations reflect detailed review, discussions, and conclusions that such lands are not necessary to support long-term significant agriculture and are commonly isolated, lack water for irrigation, and/or are in areas where other growth activities make long-term commitment to agricultural activities unlikely or inappropriate or both, consistent with the guidelines contained in Ch. 365-190 WAC. New water rights for significant irrigation in the area are not available.

4. The deletions from Class B Agricultural Lands approved in the amending motions are based on the finding that the lands removed are not used for commercial agriculture and are unlikely to be so used because of steep terrain or riparian features inconsistent with long-term commercial agriculture.

5. For lands removed from long-term commercially significant agricultural designation a two-part test was identified to determine the new zoning for those areas so removed:

A. Where property boundaries are more than 75% encompassed by a single rural development district zone, the entire property should be zoned consistent with that surrounding zone.

B. Where property boundaries are less than 75% encompassed by a single rural development district zone, the property should be zoned consistent with the abutting rural development district zone, keeping logical boundaries and blocks.

As Chairman of the Lewis County Planning Commission, I have summarized the Commission's actions and refer our recommendations to you, the Lewis County Board of County Commissioners, with a request to consider and adopt our recommendations.

Tom Cleary 8/26/03
Tom Cleary, Chairman

FINAL DESIGNATED LANDS CONSIDERATION

1. Total lands required to meet long-term commercially significant agricultural land needs in Lewis County, including reserves:
 - a. Designated lands: See map recommendations.
 - b. Farm protection on rural lands. Existing rules sufficient.
 - c. "Opt in" provision for new uses where owner needs additional protection. Existing rules sufficient.
 - d. Recommend adding farm home designation, 5 acres.
Yes X No
 - e. Recommend adding farm center designation on long-term lands
Yes X No

2. Designated lands

Map 1. West End as modified

Map 2. I-5 Corridor as modified

Map 3. Lakes Area as modified

Map 4. East County as modified

Area	Planning Commission	Staff Considerations	Final Recommendations
West End	16,936	18,136	16,936
I-5 Corridor	21,392	21,952	21,352
Lakes Area	4,283	4,823	3,823
East County	14,225	12,465	12,465
Total	56,836	57,376	54,576

✓
8/26/03

Refer to the notes for the Aug 26, 03
PC Hearing:

There are oversize maps as follows:

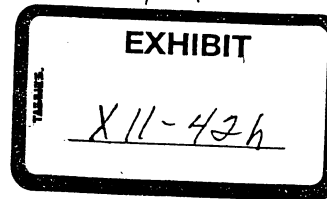
4 maps showing PC recommended Ag Land

XII-369 - 4 maps showing consultant/staff recommended Ag Land Designations

Refer to Transmittal Aug 26, 2003 to BOCC

XII-369 → 4 maps described in the memo
See #6 of 5/26/03 recommendation

Notes from Planning Commission Public Hearing and
Workshop on August 26, 2003- 7:00 p.m.
Newaukum Grange in Chehalis
Subject: Designation of Agricultural Resource Lands



Planning Commissioners Present: Mark Bolender , Fred Breed, Tom Cleary, Kyle Heaton, Lyle Hojem, Robert Kraemer, Bill Russell, , and Mike Zengel.

County Commissioners Present: Dennis Hadaller, Eric Johnson, and Richard Graham.

Staff Members Present: Robert Johnson, Craig Swanson, Erika Conkling, and Rick Turnbull.

Consultants Present: Mike McCormick and Sandy Mackie.

Public Present: please see sign-in sheet.

Handouts/Materials Used:

- Agenda
- Minutes from Planning Commission meeting of August 12, 2003
- Planning Commission Hearing Draft, Designation of Agricultural Resource Lands (17 Maps), May 29, 2003
- "Agriculture in Lewis County," A Preliminary Report to the Lewis County Planning Commission for Purposes of Public Hearing, 8/8/03
- "Agriculture in Lewis County", A Supplemental Report, 8/26/03
- Planning Commission Hearing Draft August 26, 2003, A packet of three maps 11'X17'
- Packet of Facts and Figures for the Four Pars of the County, the first page of which is titled "West End", 8/26/03, 7 pages.
- Two maps submitted by Mike McDonald to accompany his testimony about the Thomas Breneman Property Proposed for Re-zone
- Written Testimony from Susan Roth dated August 22, 2003
- Written Testimony by Brian Thompson, Vice President Lewis Co. Farm Bureau.
- Letter from John Alexander, Jr. August 26, 2003
- Agricultural Land Field Trip Notes, July 23, 2003
- Packet of Photos of Agriculture in Lewis County, 26 pages
- Three mounted photos and captions by Donna T. Randall
- Packet of three Population Density Maps submitted by Eugene Butler
- "Good Sites and Soils for Christmas Trees" by Steve Webster, June 27, 2003
- Written Testimony submitted by Eugene Butler 8/26/03, 6 pages
- Declaration of Don Stuart, Regarding the Protection of Non-Soils-Dependant Agriculture, 2 pages

1. **Call to order.** Tom Cleary called the meeting to order at 7:05 p.m.

2. **Introductions.** The members of the Planning Commission and staff introduced themselves for the record.

3. **Public Hearing – Designation of Agricultural Resource Lands**

- A. **Introduction by Staff:** Mike McCormick led off by introducing the staff and Sandy Mackie and starting walking the audience through the materials. He pointed out the paper handouts that will be used to introduce the materials. Mike McCormick explained the work that's gone on since the last hearing on agricultural lands and the last Planning Commission meeting where consultants/staff recommended some changes to the Agricultural Land designations. Mike highlighted the "Supplemental Report" document and the packet titled "West End" as items for the Planning Commission to include in their deliberations tonight.

Sandy Mackie then spoke on the framework of the law and the purpose of designating agricultural lands. He summarized the report "Agriculture in Lewis County." He went over the "supplemental report" speaking about crop lands and grain crops, corn for silage, and row

crops. See the paper included in the record. He also touched on orchards, organic crops, grass and hay. He moved on to the topics of livestock and poultry. Sandy Mackie summarized the acreages of crop lands being used and acreage requirements to fully serve agricultural needs in Lewis County. Sandy then presented the figures on the packet titled "West End" and turned it back over to Mike McCormick. Lyle Hojem questioned why we were getting a report rather than an outline for the hearing. Mike reiterated the structure for the evening. Sandy Mackie added further clarification on tonight's program.

Mike McCormick moved to the first of an array of four maps on the wall and explained what is depicted on each one. He started with the West End of the County and explained how the consultants/staff examined the area and the rationale for their recommended changes. The numbers of acres in each recommended change is presented in the summaries and tables included in the packet whose first sheet is titled "West End." Bob Johnson briefly described the differences between the Planning Commission recommendations and subsequent staff recommendations. He did this on each map in turn covering the entire county. There were 10 staff-recommended changes. See the West End paper. Sandy Mackie pointed out the last page (in West End) which frames the decision needed by the Planning Commission and asked people to testify on those points tonight. Bill Russell asked that the four maps showing the Planning Commission prior recommendation be pointed out where they hung at the front of the room.

The Planning Commission took a short break at 7:37 P.M. so they could look at and compare the two sets of maps. The Hearing reconvened at 7:52 P.M.

B. Questions and Answers: None

C. Public Testimony:

William Randall spoke from written notes. He gave his background. He said he was appalled at the process that has been used. He said the process did not consider the people on the land and condemned the process. He spoke at length of the effects of the process on a 90-year old widow. He said he is submitting papers to the Planning Commission to supplement his testimony. He spoke at length about the need for water to make agriculture work in Lewis County. Mr. Randall touched on current events state-wide with politicians and agencies and the shortage of water made available for irrigated farming. He was very critical of the process and results of designating agricultural lands by the consultants and staff.

Todd Christensen Executive Director Chamber of Commerce. He spoke from written notes. He supported the Planning Commission's efforts to designate agricultural land.

Mike McDonald, Heritage Pacific Realty: he distributed a 2-page handout of maps of the Breneman Property for whom he spoke. He wants their property removed from Agricultural designation and listed the reasons why this should be done. He wants it re-zoned to RDD-10 and RDD-5.

Eugene Butler: He is here by himself tonight because his usual group did not have a chance to review his remarks. He opposes the Planning Commission recommendations because it looks like it would be undermining agriculture in Lewis County. He has a problem because there hasn't been enough time to review and comment on the hasty proposal brought up in the last two weeks. He described how his group checked the soil types and noted the lands assessed for agriculture and open space by the tax assessor's office. He showed maps on an easel. He said the Planning Commission's process was clearly erroneous. He spoke against the idea of protecting only lands having water rights. He wonders why the Planning Commission is out to kill agriculture in Lewis County. He spoke from prepared written material which he later submitted. He advocated starting with a land capability analysis. He spoke about various examples of recommendations on particular properties. He said the

proposal by consultants/staff was not available for review. He said much too little land is being proposed for designation. He presented his views on interpreting the law and what should be protected. He disagrees with the position taken by the recommendations before the hearing tonight. He held up a population density map and said the county was in contradiction with its own comprehensive plan. He spoke about contradictions between the recommendations and assessors classifications and the locations of "prime" soils. He spoke about the fallacies in the county's reasoning in excluding hobby farms and the financial assumptions used. It doesn't agree with census figures. He spoke about part-time farmers in Lewis County. He said he would give us a soil study by Steve Webster about Christmas tree farming in Lewis County. Butler listed many factors that he felt are wrong with the recommended designations and the logic behind them. Soil Capability should be the basis of the designation. The recommendations fall way short.

Butler introduced Karen Knutsen who supports the idea of blocking up agricultural land. She supports use of floodplains for agricultural land but they are not always the best agricultural soils. She spoke about the Lincoln Creek area as well others pointing them out on a map explaining why acres should be added. She read off a lengthy list of valley bottoms that should be designated as agricultural land. She said the soil survey had many more acres of prime soils than the county recognized. She does not believe that water rights should be a requirement. She proposed additional agricultural land blocks tied to agricultural soils explaining each on ortho-photo maps displayed by Butler and Richard Roth. *Note: Start of audio cassette Tape 2.* These were old maps that were turned into the county previously. She adopted Butlers comments.

Richard Roth adopted Butler's and Knutsen's comments. He read a page-long statement written by his wife Susan Roth. Her statement criticized the Planning Commission's conduct of meetings and their treatment of people who had views different than the Planning Commission's. The Planning Commission's actions have been disrespectful and probably unlawful. She has made a video-tape that illustrates her points.

John Mudge: He also objected to the process which has been used and of the short-time offered for review of the alternative presented at the last meeting. He spoke about tax factors in hobby farms and that they represent supplemental income. Hobby farms should be given more respect and they can make money. He spoke about the flow of the Chehalis River and the work of the Chehalis Basin Partnership. It seems the flow of the Chehalis River is not declining. He spoke about using water rights or losing them and perhaps the laws will be changed. Keep your eye on the future, he said.

Ethan Allen: His OX is being gored. He is a dairy-man in the Boistfort Valley. There is a high demand for water. He has water rights. Zoning land for agriculture is the kiss of death for farmers because it devalues land value in the eyes of lenders.

Brian Thompson: Christmas Tree farmer in Lincoln Valley. Vice President of local Farm Bureau. Agriculture is an industry and must be profitable. The County has been in transition for some time. Agriculture has eroded steadily over the years. Agriculture is different in Lewis County than it has been in the past, and it is not dying. He spoke from written notes. He compared farmers to endangered species. He read a list of recommendations for the benefits of farmers and farming. He spoke at length about zoning and devaluing the land and its adverse effects on loan possibilities.

Ron Averill: He says he's a hobby farmer that pursuit consumes his Army retirement income. Hobby farmers do not sell for a profit. It's not commercially viable. He complimented the report prepared by staff on agriculture in Lewis County. He pointed out the acreage of commercially harvested land. This is what we're trying to protect. He believes the figure of 40,000 acres is realistic. He spoke about the decline of commercial farming in Lewis County.

Bob Johnson read a letter from John Alexander of Security State Bank. He described a steady erosion of agricultural activity since the 1980's. He mentioned equipment dealers, cannery crops, cattle and dairy farming.

Testimony ended at 9:32 P.M.

4. Work Session – Designation of Agricultural Resource Lands: Mike McCormick offered to lead the necessary discussion.

The Planning Commission took a "5-Minute" break. At 9:33 P.M. Reconvened at 9:44 P.M.

Mike McCormick said there are two items before the Planning Commission: 1. Do the prepared reports accurately reflect and define long-term commercial agriculture in Lewis County? and 2. Recommendation for the designation of agricultural resource lands based on the past 16 months process, material presented by consultants/staff, and testimony heard tonight.

Bill Russell asked what zoning would apply to lands taken out of agricultural lands designation. Sandy Mackie said the recommendation is: if another zoning surrounds the lands at least $\frac{1}{4}$ of the way around, then they being given that designation. Otherwise the land would be divided between surrounding zones by extending the current zoning boundary lines.

Kyle Heaton suggested that the Planning Commission make recommendations according to the breakdown of the County into four segments as shown on the four big maps, i.e., West End, I-5 Corridor Central Area, Lakes Area, and East County.

Kyle Heaton moved that the Planning Commission Recommendation for the West End be accepted. Seconded. Motion carried unanimously.

Lyle Hojem moved (for Map 2, I-5 Corridor Central Area), that the Planning Commission recommendation for Class A lands be accepted, and the Staff recommendation for Class B lands be accepted. Heaton seconded. Motion carried unanimously.

Lyle Hojem moved (for Map 3, Lakes Area), that the Planning Commission recommendation for Class A lands be accepted, and the Staff recommendation for Class B lands be accepted. Heaton seconded. Motion carried unanimously.

Lyle Hojem moved (for Map 4, East County), that the Planning Commission recommendation for Class A lands be accepted, and the Staff recommendation for Class B lands be accepted. Heaton seconded. Motion carried unanimously.

Mackie then asked if the Planning Commission would accept the report prepared (with amendments) as adequate to define commercial agriculture in Lewis County. This is the "Agriculture in Lewis County" report distributed at the August 12 meeting and the "Supplemental" report distributed tonight.

Kyle Heaton said it would be easy to nit pick the report to death but it goes a long way toward the goal. He moved that the Planning Commission accept that report. Motion Carried.

Mackie referred the group back to page 7 of the "West Side" Packet. Lyle Hojem moved that the Planning Commission's response to all questions in items 1b, 1c, 1d, and 1e be "yes". Seconded. Motion carries.

Sandy had Bob Johnson date and authenticate the maps to reflect the Planning Commission's decisions on what to recommend to the Board of County Commissioners.

Mackie suggested the Planning Commission forward the maps, the reports they accepted, and the findings on page 7 to the Board of County Commissioners as their final recommendation. Kyle Heaton moved that the Planning Commission forward the record as outlined by counsel as our recommendation to the Board of County Commissioners on agricultural resource lands. And that the Chairman be authorized to sign the letter transmitting these materials. Seconded. Motion carries unanimously.

Mackie and McCormick thanked the Planning Commission for their work and recommendations.

5. Good of the Order/ Public Comment:

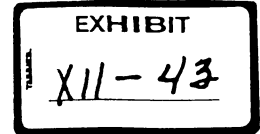
Karen Knutsen: She commented that farm agriculture will die in Lewis County because of Planning Commission decisions tonight.

William Randall: He asked which colored areas on the maps were accepted tonight. He wanted to know the fate of his property. He was satisfied with the response.

6. Adjournment at 9:56P.M.

APPENDIX 7

NOTICE OF PUBLIC HEARING
Before the
LEWIS COUNTY BOARD OF COUNTY
COMMISSIONERS



NOTICE IS HEREBY GIVEN that the LEWIS COUNTY, Washington, BOARD OF COUNTY COMMISSIONERS will hold a public hearing on Monday, September 8, 2003 beginning at 10:30 a.m. at the Commissioner's Hearing Room, located inside the Historic Courthouse at 351 NW North St, Chehalis, WA 98532. The hearing will be for the purpose of taking testimony concerning proposed amendments to the Comprehensive Plan and zoning regulations, designating agricultural land of long-term commercial significance. Those wishing to testify concerning this matter should attend.

A complete copy of the proposed amendments is available for review at no cost at:

Lewis County Community Development
350 North Market Blvd.
Chehalis, WA 98532
Or at: www.co.lewis.wa.us

For more information, contact:

Robert A. Johnson, Principal Planner
Lewis County Planning Division
350 North Market Blvd.
Chehalis, WA 98532
Phone: (360) 740-1146

This meeting site is barrier free; people needing special assistance or accommodations should contact the Planning Division 72 hours in advance of the meeting. Phone: (360) 740-1144.

/s/ Robert A. Johnson, Principal Planner

Publish: 8/27/2003

AFFIDAVIT OF PUBLICATION

STATE OF WASHINGTON }
COUNTY OF LEWIS } ss

The undersigned, on oath state that he/she is an authorized representative of The East County Journal, a weekly newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a weekly newspaper in Morton, Lewis County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper.

The notice in the exact form annexed, was published in regular issues of The East County Journal which was regularly distributed to its subscribers during the below stated period.

The annexed notice, a

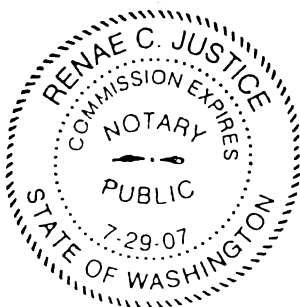
Notice of Public Hearing, Comprehensive
Plan and Zoning Regulations

was published on Aug. 27, 2003

The amount of the fee charged for the foregoing publication is the sum of \$ 23.28

[Signature]

Subscribed and sworn to before me this 27th day of Aug. 2003



Renae C. Justice
Notary Public in and for the
State of Washington
Residing in Centralia
Washington

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/s/ Robert A. Johnson, Principal Planner

(Published in the East County Journal
August 27, 2003)

APPENDIX 8

X11-43b

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON
BOARD MEETING MINUTES

September 8, 2003

The Board of County Commissioners for Lewis County, Washington met in regular session on Monday, September 8, 2003; at 10:00 a.m. **COMMISSIONERS ERIC JOHNSON, and RICHARD GRAHAM** were in attendance. The meeting was called to order by **CHAIRMAN JOHNSON** who determined a quorum and proceeded with the flag salute. **COMMISSIONER GRAHAM** moved to approve the minutes from the meeting held on Monday, August 25, 2003. **CHAIRMAN JOHNSON** seconded. Motion carried.

PUBLIC COMMENT:

No one signed up to speak.

NOTICE:

COMMISSIONER GRAHAM moved to approve Notice agenda items 1 through 4. **CHAIRMAN JOHNSON** seconded the motion. Karisa Duffey, Clerk of the Board, read the items aloud.

1. **PROCLAMATION:** Declaring September 11, 2003 as "9-1-1 Day" in Lewis County.
2. **PROCLAMATION:** Declaring September as "Weather Radio Awareness Month" in Lewis County.
3. **PROCLAMATION:** Declaring September as "Alcohol and Drug Addiction Recovery Month" in Lewis County.
4. **NOTICE OF HEARING:** Regarding the approval of various land classifications. Hearing will be held on Monday, September 22, 2003 on or after 10:30 a.m.

Motion carried 2-0.

CONSENT:

COMMISSIONER GRAHAM moved to approve Consent agenda items 5 through 12. **CHAIRMAN JOHNSON** seconded the motion. Karisa Duffey, Clerk of the Board, read the items aloud.

5. **Resolution #03-359** Regarding the proposed sale of surplus property off of Meyers Road near Mossyrock, Washington.
An unidentified audience member asked if legal access has been obtained for the proposed properties to be sold. Larry Unzelman, Property Management, stated the properties would be sold without legal access.
6. **Resolution #03-360** Approving additional funds for the Southwest Washington Fair's Revolving Account to prepare change for the Harvest Swap Meet event to be held September 20 and 21, 2003.
7. **Resolution #03-361** Cancellation of a municipal warrant in the amount of \$1,122.23.
8. **Resolution #03-362** Approving two amendments to a contract between Lewis County and the Washington State Military Department for E911 Operational Assistance.
9. **Resolution #03-363** Approving an agreement between Lewis County and Pacific International Engineering for consulting services to continue work on the Chehalis Basin Flood Reduction Project.
10. **Resolution #03-364** Approving a contract between Lewis County and the Washington State Department of Community, Trade and Economic Development to provide funding for prevention of violence and substance abuse in the amount of \$46,692.00.
11. **Resolution #03-365** Approving an amendment to the consolidated contract with the Washington State Department of Health to change funding allocations for various programs.

12. **Resolution #03-366** Approving a contract between Lewis County and the Human Response Network to provide funding for a prevention program for children and youth of domestic violence.

Chairman Johnson asked for questions. Motion carried 2-0.

Chairman Johnson recessed the meeting until 10:30 a.m.

HEARING:

10:30 a.m.

HEARING: Regarding the Special Event Application submitted by the Lewis County Drift Skippers

Chairman Johnson called the meeting back to order. He announced the purpose of the review. He asked for a staff report.

Tony Barrett, Deputy Health Officer, stated the Health Department has reviewed the application. He stated the applicants have made all of the necessary arrangements. He stated based on the Health Department's review, he recommends approval of a provisional permit.

Chairman Johnson asked for comments from the applicant. The applicant was not present.

COMMISSIONER GRAHAM moved to approve the Special Event Application submitted by the Lewis County Drift Skippers for the grass drags to be held on October 4, 2003. **CHAIRMAN JOHNSON** seconded. Motion carried 2-0.

10:30 a.m.

HEARING: Regarding the proposed vacation of the Fuller Road Right of Way **Resolution #03-367**

Chairman Johnson announced the hearing and asked for a staff report.

Larry Unzelman, Property Management, stated in April of 2003 the Public Works Department received a request from the affected property owners to vacate. He stated on June 2, 2003 the Board of County Commissioners approved a resolution to proceed, ordering the County Engineer to examine the road. He acknowledged that the road is not presently maintained by Lewis County and the requesting parties are the only people affected by the vacation. The County Engineer recommends compensation in the amount of \$200.00 plus administrative and publication costs. He stated notice was posted on road. He indicated the property owner had submitted payment. He then stated the Public Works Department recommends vacation of the Fuller Road right of way.

Commissioner Graham asked if all fees been paid in full.

Mr. Unzelman acknowledged the department has received payment.

Chairman Johnson asked for questions. There were none. He then asked for testimony. There was no testimony. He asked for a motion.

COMMISSIONER GRAHAM moved to approve Resolution #03-367, vacating a portion of Fuller Road right of way. **CHAIRMAN JOHNSON** seconded the motion. Motion carried 2-0.

10:30 a.m.

HEARING: Amending the Lewis County Comprehensive Plan and Development Regulations

Chairman Johnson announced the purpose of the hearing and asked for a staff report from Robert Johnson, Principal Planner.

Mr. Johnson stated the county has come a long way in the last four to five years. He acknowledged the county has adopted a number of amendments to the Comprehensive Plan and Development Regulations. He stated the county has been involved in this process for approximately one year. He noted staff completed a field trip. He explained the Planning Commission held public hearings and made a recommendation to the Board. He briefly reviewed the maps submitted for the Board's consideration.

Mike McCormick, Consultant, acknowledged the extensive efforts made to review the agriculture character in Lewis County. He stated a significant amount of work was undertaken by the Planning Commission, which encompassed several workshops and included great

participation from various stakeholders. He noted the Planning Commission tried to nail down the nature of agriculture in Lewis County by considering economics. He noted the Board attended many of those Planning Commission workshops and may have heard this testimony already. He feels the recommendation from the Planning Commission truly responds to the designation of Agricultural Lands of Long Term Commercial Significance. He stated he feels this is a responsible conclusion.

Chairman Johnson asked for questions from the audience.

An unidentified audience member asked what the zoning was for his particular property.

Mr. Johnson reviewed the map with the citizen.

Bill Carlson asked what his property was zoned.

Mr. Johnson reviewed the map.

Mike McCormick stated the proposal is to remove Mr. Carlson's property from the Agriculture Lands of Long-term Commercial Significance designation.

Walter Abplanalp asked to have his land removed from the Long-term designation.

Mr. Johnson explained that applications to change designations would not be reviewed until a decision has been rendered from the Growth Board. They reviewed the current map proposal.

Mr. Abplanalp asked why his property has been selected to be in the Long-term designation when dairy farmers with more land in the vicinity have not.

Mr. Johnson stated the Planning Commission reviewed the land that had been designated previously to comply with the Growth Management Act.

Mr. Abplanalp asked what criteria was used to determine which lands were Agriculture Lands of Long-term Commercial Significance.

Mr. Johnson stated the criteria is listed in the County Comprehensive Plan and was done in 1996.

Mr. Abplanalp stated he was told he would always have the option to subdivide his property into five acre pieces.

Sandy Mackie, Consulting Counsel, stated the Board could always review his designation. He asked for his name and address of the subject property.

Mr. Abplanalp gave the requested information to Robert Johnson, Principal Planner.

Chairman Johnson began the public testimony portion of the hearing. He noted the County Commissioners had attended many of the Planning Commission hearings.

Todd Christensen stated that the Centralia-Chehalis Chamber of Commerce encourages and supports a conclusion with favorable action on the transmittal submitted by the Planning Commission. He stated the Chamber feels the Planning Commission's transmittal is a good recommendation. He stated they feel this is an accurate reflection of agriculture in Lewis County. He indicated the Chamber supports breaking the county into four separate areas for mapping purposes. He commended the Planning Commission for their efforts. He asked the Board to move expeditiously.

Bill Randle acknowledged that many of the decision makers involved in this effort might not have a professional background. He stated he gave testimony at the August 26, 2003 Planning Commission hearing. He gave several examples of farming with little or no irrigation and the failure of the crops involved. He stated the most important fact is that his soil does not meet the criteria for Ag Lands of Long-term Commercial Significance. He noted a commercial crop could not exist on his lands. He stated he felt the one in twenty designation was reasonable. He gave another example of farming without irrigation. He thanked the Board.

Bill Carlson of Winlock stated there is little good farming land in Lewis County. He congratulated the Commissioners for choosing good members of the Planning Commission. He commended the Planning Commission for their professionalism, courteous and patient behavior, and their knowledge of the subject and lands of Lewis County. He praised County staff and stated they were very helpful throughout this process.

ohn Mudge stated there is an apparent misconception presented by Sandy Mackie, counsel for Lewis County. He stated Mr. Mackie has indicated there are two types of farms, commercial or hobby. He stated a small farm might be operated in a business-like manner.

He discussed the tax filings of these types of farms. He stated the point is that there are small farmers that operate to supplement their income. He stated the county should encourage agriculture. He stated farmers need flexibility. He urged creation of a larger amount of agricultural land. He then noted Bob Johnson did not respond to an earlier question regarding what criteria were used to determine which lands are considered Agriculture Lands of Long-term Commercial Significance. He stated the public is owed that explanation.

Walter Abplanalp stated he has a 100-acre dairy farm near Ethel. He stated the purchase price was negotiated on the ability to develop the land. He explained if his land is designated as Agriculture Lands of Long-term Commercial Significance then he will not be able to develop. He noted the surrounding neighbors already complain about the smell and the noise from his farming operation. He acknowledged he does not know how he can continue farming surrounded by five and ten acre neighbors. He acknowledged it has become a real challenge to stay in the farming/dairy business and admitted he would like to hand his land down to his children, however, he does not feel they will be able to farm it profitably in the future.

Commissioner Graham asked if the smaller parcels surrounding his farm are starting to develop?

Mr. Abplanalp mentioned the sizes of the surrounding parcels and the housing associated with those lands.

Commissioner Graham asked for an estimate of his loss if the property were left with the current designation.

Mr. Abplanalp explained it would be very difficult in the first place to find someone interested in purchasing a 100-acre dairy farm. He then stated he felt a reasonable price would be \$2,000 to \$3,000 an acre and smaller parcels \$5,000.00 an acre or more.

Chairman Johnson asked if he had the opportunity to attend any of the previous meetings held by the Planning Commission.

Mr. Abplanalp stated he was not able to attend any of the other meetings but did apply for a change in designation last year.

Eugene Butler of Chehalis stated the county is required to designate Agricultural Lands. He stated he had prepared a map and introduced it into the record. He explained he had examined aerial photos of the county, soil samples, and population density maps. He stated there are approximately 238,000 acres of prime soils. He briefly discussed the USDA Survey. He stated the County claims farming for under \$25,000.00 in profit a year is considered a hobby farm. He stated this dollar amount is not appropriate. He stated the County is not reserving the most capable lands for farming. He noted the County claims there is no market for hay. He stated virtually all of the land reserved is reserved based on the premise they have water rights. He stated the County's efforts do not support agriculture. He stated he believes public participation is still a serious issue. He noted he would like to see the river valleys protected. He reviewed the map and asked to protect the Hanaford Valley, Independence Valley, King Road area, North Fork, Newaukum, Cowlitz River Flood Plain, the Tilton Valley near Morton, the Chehalis River Valley between Dryad and Chehalis, and the Bunker Creek area. He stated the uplands need to be protected because they are more suitable agriculture lands. He indicated the Napavine to Vader area has a band of agriculture land on both sides of the railroad tracks. He mentioned the area southeast of Toledo near the Cowlitz River also needs to be protected. He stated the area from Ethel to Salkum has agricultural soils and there is no reason these should not also be designated as Agriculture Lands of Long-term Commercial Significance. He noted the Onalaska area has a large percentage of agricultural soils. He noted the area east of Mossyrock has not been included in the designation. He stated these are the things that should be done to improve the agriculture in the County. He suggested the Board's recommendation to the Planning Commission was superior to the current recommendation submitted by the Planning Commission.

Chairman Johnson asked if the 1997 Census of Agriculture referred to by Mr. Butler recognized lands of Long-term Commercial Significance as the designation would?

Mr. Butler acknowledged the census showed lands used for agricultural purposes to generate income. He stated it is still commercial land used for commercial significance.

Glenn Aldrich thanked the Board. He acknowledged he operates a farm in the Mossyrock area. He stated he has heartfelt disagreement with the Growth Management Act in general, but he commended the Board for their efforts. He thanked the Planning Commission for their dedication. He thanked County staff for all of their work. He thanked the group of objectors, stating they have forced a lot of thinking that might not have occurred otherwise. He thanked the Lewis County Farm Bureau for their participation. He acknowledged the Chamber of

Commerce also did a very good job of reviewing the current proposal. He stated he felt the Board now has the opportunity to increase agriculture activity in Lewis County. He stated this could allow farms with good soils to operate with efficiency. He asked for a plan to foster the agriculture opportunities within Lewis County. He mentioned the importance of irrigation for farming and agriculture. He stated he feels the whole I-5 corridor is incompatible with farming.

William Smith stated during all of the testimony he had not heard anything about people. He stated rural Lewis County has grown so much it has become very hard to farm without agitating the neighbors. He asked for some protection for those farmers who want to farm their land.

Commissioner Graham mentioned the Right to Farm Ordinance. He stated he feels if someone buys land in an agricultural area, they should understand there would be farming activities.

Chairman Johnson closed the testimony portion of the hearing and announced a recess until 1:30 p.m. to consider Ordinance 1179E and Resolution #03-368.

Chairman Johnson brought the meeting out of recess at 1:33 p.m. on Monday, September 8, 2003. He introduced Sandy Mackie, consulting counsel.

Mr. Mackie explained the Ordinance and Resolution would protect agriculture of Long-term Commercial Significance in Lewis County. He stated the work that has been done is not just a one-time snapshot of farming but also a history of agriculture and a view of the future of agriculture in Lewis County. He noted there are two types of agriculture in Lewis County. There is land dependent and agriculture that is not land dependent. He noted an equal amount of land is on rotating pastureland. He acknowledged the County has a significant Right to Farm ordinance. He indicated poultry farmers are not dependent on land; however, they need the ability to opt-in to the designation. He acknowledged the 1997 Farm Census had over 1000 farms in Lewis County. He stated some of these were on very small acres of land. He noted these smaller farms typically didn't continue when the property was transferred and the rate of returns on these small farms was between 8-15 percent. He noted returns of less than \$2,500.00 were considered "hobby farms". He explained that was all but about 130 farms in Lewis County in 1997. He reiterated that small farms tend to come and go. He asked where the commercial farms and commercial farmers are that are passed down from generation to generation. He indicated Mike McCormick would walk through those areas for the Board and explain why some aren't being considered for this designation.

Mike McCormick, Consultant, stated he wanted to highlight for the Board the methodology the Planning Commission and County staff used in making decisions. He indicated all aspects of farming were reviewed. He listed various entities involved in the process including Lewis County Farm Bureau, state agencies, and Farm Services. He noted all of the information gathered developed a picture of Agriculture Lands of Long-term Commercial Significance in Lewis County. He noted they began with a review of the 1997 Census of Agriculture. He stated they then looked at significant revenue and other information provided by Farm Services. He noted Farm Services helped identify which agricultural lands were more significant than others. He noted one staff person said on the record, "...The most important thing you can do for Lewis County is to have right to farm provisions." He stated the future of farming in Lewis County would be entrepreneurs. He acknowledged Lewis County already has an excellent set of ordinances providing considerable protection for farmers. He then noted the Planning Commission reexamined the entire County using aerial photos. He stated they then took that information and reviewed the set criteria to come up with the amount of acreage to support Agriculture Lands of Long-term Commercial Significance. He stated all of the information was gathered, including suggestions from the petitioners, and the Planning Commission went on a field trip to view the agriculture lands in the County. The recommendation was then revised. He indicated there was a lot of ground being used as pasturelands. He noted the recommendation from the Planning Commission provides for a significant margin of error. He indicated the tax information provided during earlier testimony was philosophical and general. He indicated that information is not relevant to the decision before the Board. He acknowledged the County Commissioners are aware of the cost to provide services. He briefly noted the different of the areas of the county, and mentioned the areas identified by Mr. Butler during testimony. He stated the Planning Commission looked at all of those areas. He briefly reviewed the Lincoln Creek area and explained the nature of agriculture has changed there. He stated there might have been commercially significant agriculture there 30 years ago, but it doesn't exist today. He noted the agricultural activity there doesn't meet the criteria used by the Planning Commission.

Robert Johnson, Principal Planner for Lewis County, noted that staff at the County includes not only himself and **Mr. McCormick** but also **Craig Swanson** and **Erica Conkling** as well. He stated staff reviewed every section of the county using aerial photos. He noted this information was used in conjunction with the set criteria and the actual events taking place in Lewis County. He explained the textual designation considers things such as transportation and proximity of land to Urban Growth Area's to name a few. He then reviewed the maps. He began with the area south of Napavine.

Mr. Mackie asked if there were questions from the Board.

Commissioner Graham noted that at one time the Board was told the County needed to provide between 39,000-44,000 acres of Agricultural Lands of Long-term Commercial Significance. He stated at the hearing on August 26, 2003, staff and the Planning Commission ended up with over 54,000 acres.

Mike McCormick explained the Planning Commission and County staff reviewed the agriculture on a crop-by-crop basis to find out how much land was being used. They also needed to provide a conservative margin to ensure sufficient land was provided to allow agriculture uses to continue. He noted the agricultural community has always been very quick to adapt. He noted there is some margin of error in the recommendation from the Planning Commission. He indicated this is prudent and justifiable. He also stated this provides more than sufficient land to allow agriculture to continue in Lewis County.

Mr. Mackie noted the Planning Commission and staff looked at not only what was planted this year but also what the history of the land has been and what is the potential? He stated in addition to the historical information, they tried to identify what is capable in the foreseeable future. He noted this is an additional flexibility.

Commissioner Graham noted the "opt-in" alternative for those who want to increase the size of their farms.

Mr. Mackie acknowledged this would be especially helpful for poultry farmers.

Mr. McCormick reiterated the statement made by staff at Farm Services, "...the most important thing you can do is to protect the right to farm in Lewis County." He indicated there is plenty land for future uses.

Mr. Mackie discussed some geographic features of the County and possibilities of farming without being soil dependent.

Chairman Johnson noted the statute talks about growing capacities, productivity, soil composition, and land proximity to population. He stated the context is broader than soils and water. He asked what the discussion involved regarding Long-term Commercial Significance.

Mr. Mackie stated the Planning Commission did some work and then asked for input. He noted land capable of being farmed is an important criteria. He noted it is important to protect the agriculture industry. He stated the lands that have been designated would cover the existing and possible row crops.

Commissioner Graham mentioned the two bankers that spoke to the Planning Commission indicated how difficult it is for a farmer to get loans to continue operating.

Chairman Johnson agreed there is an uncertainty in the industry.

Commissioner Graham noted that without loans, after a couple of years of losses, a farm might not be able to continue operations.

Mr. Mackie stated when land is zoned for agriculture that doesn't have an economic use, the lender needs to loan not only against the land but also against the farmer.

Mr. Graham noted several corn farmers who have begun to supplement their income using corn mazes.

Mr. Mackie stated the farm tourist businesses are things that will help the farmer's income.

Chairman Johnson asked what the relationship is of **Mr. Abplanalp's** application for rezoning and the current process. He asked if his request should be considered at this time.

Mr. Mackie stated he felt the Board should consider his application at this time.

Bob Johnson stated it was decided early in the process to table all of the resource designations until the Growth Board rendered a decision.

The Board reviewed the map and specifically **Mr. Abplanalp's** dairy farm.

Mr. Mackie stated it is the Board's ability to remove this from the current designation.

The Board discussed the procedure to amend and remove **Mr. Abplanalp's** dairy.

Chairman Johnson asked about the SEPA and other environmental requirements associated with this Comprehensive Plan and Development Regulations amendment.

Mr. Mackie explained the SEPA concurred with the previous designations. He noted this amendment would further define those designations. He also noted the recommendation is that these are consistent with those environmental designations. He then noted the Board had received the findings and recommendation from the Planning Commission. He stated the consultants have tried to summarize the materials that have been submitted. He noted the Board had reviewed the information and he asked if they had any other questions.

Commissioner Graham stated under Item 6, the area between Napavine and Winlock has been cited as the area most likely for activity to occur.

Mr. Mackie noted the County currently has a proposal for a planned community there and also a destination resort. He noted there is a long detailed process before those can be approved.

Chairman Johnson asked if by approving the "Findings" the Board is finding that this is an area for growth?

Mr. Mackie stated the term "potential" could be added.

Chairman Johnson thanked the consultants for supplying the information in time for the Board's review before the hearing.

Mr. Mackie asked if the Board would like any changes before adoption.

COMMISSIONER GRAHAM moved to approve Resolution #03-368. CHAIRMAN JOHNSON seconded.

Commissioner Graham also asked to remove Mr. Walt Abplanalp's farm from the designation.

Mr. Mackie noted it is not long-term significant and is isolated since it is surrounded by designations of 5,10 and 20.

Amendment was approved by a vote of 2-0.

Chairman Johnson asked to identify a way to waive the opt-in fee for the agricultural designation.

Motion carried 2-0, approving Resolution #03-368.

Mr. Mackie introduced Ordinance 1179E.

Commissioner Graham noted the zoning for parcels removed from this designation should be zoned as the abutting lands. He asked if this had been added in the Ordinance.

COMMISSIONER GRAHAM moved to approve Ordinance 1179E. CHAIRMAN JOHNSON seconded.

Chairman Johnson asked for clarification under Item 2b. He asked if it is a Conditional Use Permit or Special Use Permit?

Mr. Mackie stated it should be Special Use Permit. He noted the Board also wanted to include the zoning map change for Mr. Abplanalp.

COMMISSIONER GRAHAM moved to approve the amendments. CHAIRMAN JOHNSON seconded. Ordinance 1179E was approved 2-0.

CHAIRMAN JOHNSON moved to change Special Use Permit on 2b. COMMISSIONER GRAHAM seconded. Motion carried 2-0.

Chairman Johnson read a letter from Commissioner Hadaller into the record. A copy of this letter is attached to these minutes.

The ordinance was approved 2-0.

COMMISSIONER GRAHAM moved to approve the Motion and Findings in Support of the compliance Report on Designation, Conservation and Protection of Long-Term Commercially Significant Agriculture Lands in Lewis County. CHAIRMAN JOHNSON seconded with the additional change of inserting the word "potential" and inserting the Resolution #03-368. Motion carried 2-0.

Mr. Mackie stated staff would transmit the approved actions to the Western Washington Growth Management Hearings Board.

Chairman Johnson asked for a clean copy of the motion and findings, which include the amendments.

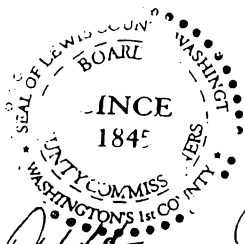
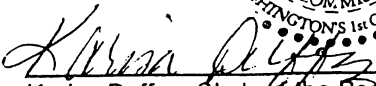
Mr. Mackie stated a clean copy, including the map changes, would be provided to the Board.

Chairman Johnson thanked staff for their efforts. He also thanked the citizens for their input.

There being no further business, the Commissioners' public meeting was recessed at 2:53 p.m., Monday, September 8, 2003. The next public meeting will be held on Monday, September 15, 2003.

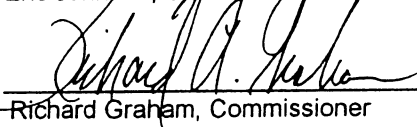
Please note that minutes from the Board of County Commissioners' meetings are not verbatim. A tape of the meeting may be purchased at the Commissioners' office.

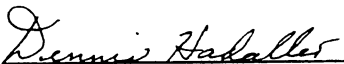
ATTEST:



Karisa Duffey, Clerk of the Board
Lewis County Commissioners

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY WASHINGTON

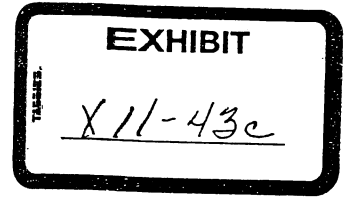

Eric Johnson, Chairman of the Board


Richard Graham, Commissioner


Dennis Hadaller, Commissioner

APPENDIX 9

X11-43 c



BOARD OF COUNTY COMMISSIONERS
EXCERPTS FROM
SEPTEMBER 8, 2003

**BOARD OF COUNTY COMMISSIONERS
(EXCERPTS FROM THE SEPTEMBER 8, 2003 MEETING)**

MR. ABPLANALP: My name is Walter Abplanalp. I live on 238 Tucker Road. **And** I put in a written proposal to have my land taken out of ag. And I was just wondering if that was approved or if that was -- if that has been looked at at all.

MR. JOHNSON: The individual applications for rezones are on agricultural land **and** forest lands aren't going to be looked at until after the Growth Board decisions. So your application is still there, but it's pending review by the Growth Board. And that will take place at a -- later this year. By the County, excuse me. That will be looked at at a later date.

MR. ABPLANALP: So can I make sure that mine is still in -- in ag land at this point?

MR. JOHNSON: If you'd like. Do you know what -- Why don't you go help him find his property, and provide him the answer?

(CONVERSATION OUTSIDE MICROPHONE RANGE.)

MR. ABPLANALP: Could I have a question then?

MR. JOHNSON: Sure.

MR. ABPLANALP: I'm wondering why my property has been selected for -- to be in long-term ag where there's other dairy farmers just down the road that have more land than I do that were not put in that type of zoning. And I am totally surrounded by five- and ten-acre parcels.

MR. JOHNSON: Sandy, view on that from staff's perspective?

MR. MACKIE: The Planning Commission looked at the agricultural land that was designated previously, and the purpose of that was to determine whether or not that complied with the requirements of the Growth Management Act. As a part of that process, there was recommendation that some lands be put in and some lands be taken out. Individual applications that were submitted last year were not done at this time. They will be looked at at a later date.

MR. ABPLANALP: What was the criterion for looking from -- from looking from one lease [sic] of -- you know, that is currently being farmed and is actually larger than mine, and -- and opposed to mine that was rezoned in farm land? I mean, it's according to this GMA plan --

MR. JOHNSON: I'm not sure I understand your question.

MR. ABPLANALP: What was the criterion for putting mine into ag land where larger farms were not put into ag land?

MR. JOHNSON: Your -- your proposal was not looked at specifically at this time. It will be looked at at a later date. So I can't answer the question until the Planning Commission --

MR. ABPLANALP: The other ones have already been answered. They've already been put in five- and ten-acre parcels where mine was not.

MR. JOHNSON: The criteria for designation is in the County Comprehensive Plan and in the Development Regulation. And that designation was done 1996, for the most part. And I can't answer your question specifically. I wasn't here in '96.

MR. ABPLANALP: Well, I know that I was -- I spoke to a couple of the people in the Growth -- somewhere in this office, and they were saying, well, don't worry about it. You can always put in the five-acre parcels. That's always going to be a option. This was probably five years ago or so.

MR. MACKIE: And this is Sandy Mackie, Counsel. The commissioners always have the opportunity to look at this particular parcel during their workshop.

MR. ABPLANALP: Okay.

MR. MACKIE: The Planning Commission did spend several months going through all of the various alternatives, and they made a recommendation as to which property goes in and which property goes out. We'd actually have to go back and listen to tapes to find the precise reason. But if you could give me your name again and the location of the property.

MR. ABPLANALP: My name is Walt Abplanalp.

MR. MACKIE: Okay

MR. ABPLANALP: And the address is 238 Tucker Road, Ethel.

MR. MACKIE: Okay. All right.

MR. ABPLANALP: Thank you.

MR. JOHNSON: Thank you

(END OF EXCERPT)

BOARD OF COUNTY COMMISSIONERS
(EXCERPT FROM THE SEPTEMBER 8, 2003 MEETING)

MR. JOHNSON: Next is Mr. Walt -- and, Walt, I'm going to do a terrible job on your last name here. Is it Abplanalp?

MR. ABPLANALP: (outside microphone range).

MR. JOHNSON: Okay. Why don't you come on up?

MR. ABPLANALP: My name is Walt Abplanalp. And I have a -- well, a little bit under a hundred-acre dairy farm in Ethel. I purchased this property in 1993. And at that time I purchased it from my father. And built into the price of that property was -- was not just farming, but the right to be able to develop it, which was being able to break it into five-acre parcels, because that was the designated -- that was the general rule at that time.

And if my property is put into long-term ag property -- you know, this may be after the fact, but there will be no compensation to myself for that -- for that being taken away.

Also, I'd just like to say that I do have my -- my acreage is a little bit under a hundred acres and is totally surrounded by five- and ten-acre parcels. When these parcels are developed, I don't really see how realistically I can continue to farm with all of my neighbors complaining about the noise and the smell. We already have some of that now. But once that development does occur, I don't really see how that -- how the person could realistically farm on that -- on that small of acreage.

Also, farming on this scale is not -- is becoming less and less viable. We see -- we see the large dairies going into Eastern Oregon with 30,000 cows. This was not the case in 1993. We've also experienced several dairy farmers in the area, i.e., Hank Gowman that went out of business here lately. He was a very large farmer, a good dairy farmer. Wasn't able to make it. Times are very tough. So it is very -- it's a real challenge to stay in the business, and then it is also, you know, long term, it's going to be even tougher, I would assume.

Also, you know, if -- I've worked through this land my entire life and I would like to be able to hand it down to my children without having them have the restrictions on it, because I feel that -- that they most likely will not be able to farm it, and -- well, probably won't be able to farm it. And I'd just like to question the long-term significance of a small acre -- small farm like this surrounded by five- and ten-acre parcels that are hobby farms or little farms.

And that's about it. Thank you.

MR. GRAHAM: I have a question. You say you're surrounded by five- and ten-acre parcels now.

MR. ABPLANALP: Right.

MR. GRAHAM: Are they starting to develop, some of those five- and ten-acre pieces starting to sell?

MR. ABPLANALP: No, not -- well, uhm, just up the road from me, I know there's like in a five-acre parcel, there were like -- there was a two-acre parcel. There's another two-acre parcel. And then there's a five-acre parcel behind that.

MR. GRAHAM: Okay. Well, I guess what I'm trying to find out is what you believe is the -- being surrounded by five- and ten- acre parcels and maybe some a little bit smaller, what your loss would be if you were left -- compared to what the asking price, I guess, is of the lands that surround you, uh, per acre price, what would -- how much of a loss do you think you would be taking, if you were left as 100-acre -- or slightly under 100-acre dairy or a farm of some type?

MR. ABPLANALP: Well, first you'd have to find somebody that wanted to dairy that, of course, and I think that would be a real challenge. I think, you know, for the land, just for the land itself, I think, you know, realistically you'd have to go to 2- to \$3,000 an acre for, you know, for farm property, whereas the -- you know, the develop -- if you could put it into five-acre parcels, I would think it would be worth, you know, 5,000 or more.

MR. GRAHAM: Okay. Thank you.

MR. JOHNSON: Walt, I had one question, too. I'd call you Mr., but I couldn't pronounce your last name again. So, excuse me.

Did you have a chance to -- and I know we potentially have your application in for change under another -- under another separate process, but did you have an opportunity to go to any of the Planning Commission meetings or any of the other processes that led up to this point, or is this really the first -- your first venture in?

MR. ABPLANALP: Uhm, yeah, I planned on attending it, and then, I don't know, something came up, I didn't make it. So --

MR. JOHNSON: Okay. I -- that was just --

MR. ABPLANALP: -- this is more or less --

MR. JOHNSON: -- put it in context.

MR. ABPLANALP: Yeah.

MR. JOHNSON: Okay.

MR. ABPLANALP: But, as I said, I did apply for it --

MR. JOHNSON: Right.

MR. ABPLANALP: -- last year.

MR. JOHNSON: Okay. Great. Thank you very much.

UNIDENTIFIED: Which is still in the works.

MR. JOHNSON: Which is still in the works. Right. Okay. Thank you very much.
(END OF EXCERPT)

BOARD OF COUNTY COMMISSIONERS
(EXCERPT FROM THE SEPTEMBER 8, 2003 MEETING)

CHAIRMAN JOHNSON: I just had two questions. One was very specific, the issue that -- I'm not going to -- still not going to be able to pronounce his name -- Mr. Walt Abplanalp brought to us -- he's not here to defend his -- my mispronunciation. He asked a very specific question, seemed very direct. The question was, the relationship to this process that we're doing now versus the relationship that he has a submittal in to -- for the County to review that at a later time.

Is this something we should consider at this time, or is this something we should wait?

MR. MACKIE: I think you should consider it this time, because the designation of long-term commercially significant agriculture is occurring today. The request for a rezone, those are the ones that are being looked at at a later time are the ones who are saying, I'm in R1 to 20, and I should be R1 to 5, or changes like that.

So, if Bob could identify the property, the guidelines to you indicate that dairy farms should have more than 100 acres, if that's the principal basis for the designation, and I don't know what the surrounding properties were.

MR. JOHNSON: Early on it was decided to table all of those resource lands, rezones, from not only agriculture but forest and mineral as well. So there is a separate -- the only one that we -- that would be addressed would be Mr. Abplanalp's at this point, because we haven't even looked at the other ones.

UNIDENTIFIED: Are there other examples where they are --

UNIDENTIFIED: Well, I'd like to -- somebody -- I'd like to go over and see where he is on the map, because he said he's surrounded by all fives and tens, and I think I agree that this would be the time to change that one if he's surrounded all --

UNIDENTIFIED: Yeah, and I think that's appropriate. So, why don't --

UNIDENTIFIED: On Tucker Road?

UNIDENTIFIED: Yep.

(THE BOARD REVIEWS MAP OUTSIDE MICROPHONE RANGE)

MR. MACKIE: Mr. Chairman, you certainly have the flexibility, that's the purpose of the public hearing, to determine if there's a given property which you think doesn't fit the overall criteria to take it out of agriculture zoning.

UNIDENTIFIED: (Inaudible).

MR. MACKIE: And I would recommend, if you were to do that and give your reasons, is, there is a sort of a uniform then underlying zone that would be assigned to the property. He certainly has the ability if he wanted to suggest that something else is appropriate to have that heard through a public hearing process which is coming up in the future. So.

UNIDENTIFIED: Well, that's just what we're talking about, (inaudible), is to -- he could make -- or application or whatever, if you will, to change, but it looks like that the area all around

him would probably have to apply, if you will, or go in a block, or something. Otherwise he has to -- he's, what, 75 percent of the lands around him would have to be changed before he could be changed. It appears that they're all 20s that are around him now. So, he could go from -- to five 20s, I guess, or roughly, whatever.

UNIDENTIFIED: Well, I mean, that's what you -- I mean, the Planning Commission would look at that. All you're doing here in response to his request is asking -- is making the decision as a legislature whether you believe it was appropriately retained in or if you find it to be isolated and too small to be commercially significant for a dairy farm, and there's been no testimony as to other use of the property. You -- one of the reasons you have a reserve is because some of these properties, you know, may have been on the margin. You may find that one should not be designated, and then you'd allow it go back to the default zone, which, as I understand, is R1 to 20 in this case, which is consistent with the way you've treated all of the other properties that have come out of ag, and then people can deal with a different zone change if they want to make that request. But that would require a hearing in front of the Planning Commission.

UNIDENTIFIED: Well, I guess my question is, he's surrounded by nothing larger than 20-acre pieces, and down, and it looked like one might even be two or three acres, kind of kitty-corner across the road. Most of them are fives and tens in the general area. But he happens to be -- all around him it looks like -- or at least on two sides it's 20s. Across the road it's probably 10s, I'm not sure, and then --

UNIDENTIFIED: Kitty-corner (inaudible) fives.

UNIDENTIFIED: -- Yeah.

UNIDENTIFIED: I would think that the criteria is that, is a stand-alone property, and given the guidelines that the Planning Commission has used for inclusion and exclusion, this would seem to fall in the bubble, and if you chose to just recommend that this be removed on the grounds that it's an isolated property surrounded by other development and not necessary for long-term commercially significant ag, because you do have enough lands designated to handle a dairy industry for the foreseeable future. Then that's certainly a supportable position for you to take.

UNIDENTIFIED: You need a motion for that? Or how do you --

UNIDENTIFIED: One of the things we'll do is, as we proceed, I will ask if -- on the resolution, if there's a motion to amend the resolution, and at that time there'd be a motion amend the map that went with the resolution, and you could make the motion at that time.

UNIDENTIFIED: Okay. The only other question I had was associated with the environmental impact statement and SEPA.

(END OF EXCERPT)

BOARD OF COUNTY COMMISSIONERS
(EXCERPT FROM THE SEPTEMBER 8, 2003 MEETING)

COMMISSIONER GRAHAM: ...in order of December 11th, 2002.

MR. MACKIE: I think it's 2003, but I think you're right with 2002.

COMMISSIONER GRAHAM: I was -- we've got an amended one here. Here's --

MR. MACKIE: Right. Okay. I'll second that for a discussion. And you want to amend --

COMMISSIONER GRAHAM: I would like to -- and I assume that's -- is that Item 3 under Agriculture Resource Land Maps, Attachment C?

MR. MACKIE: It's actually all of those maps.

COMMISSIONER GRAHAM: All of them?

MR. MACKIE: So, you're amending all of the maps that would contain -- is it the gentleman's name that we can't pronounce, is that --

COMMISSIONER GRAHAM: Oh, I've got --

MR. MACKIE: -- what we're talking about?

COMMISSIONER GRAHAM: -- it here someplace. I'll -- can you say it, Ap -- Mr. Walt Apland -- Allup or something.

MR. MACKIE: All right. The Clerk of the Board does have the name correctly.

CLERK: Abplanalp.

MR. MACKIE: And it will be so reflected in the minutes.

COMMISSIONER GRAHAM: That's to remove him from the Class A ag land.

MR. MACKIE: And, as I recall the discussion, number one, the property is currently used as dairy. And in your findings, that is smaller than a long-term commercially significant dairy. Number two, that it's an isolated property surrounded by lands of other development.

COMMISSIONER GRAHAM: Right.

MR. MACKIE: It is not --

COMMISSIONER GRAHAM: The --

MR. MACKIE: -- likely or appropriate to remain or be long-term commercially significant agricultural land.

COMMISSIONER GRAHAM: It is isolated, surrounded by current zoning of 5, 10 and 20.

MR. MACKIE: Okay. All right. And that the underlying zoning for that property would be

1 in 20 at this time. Okay. The change is understood.

COMMISSIONER GRAHAM: I'll call for a first, I guess, a vote on the proposed amendment. All those in favor -- is there further discussion?

MR. MACKIE: No.

COMMISSIONER GRAHAM: All those in favor please signify by saying aye.

ALL: Aye.

COMMISSIONER GRAHAM: Amendment carries. Okay. Further discussion or additional amendments to Resolution Number 03-368. I don't have an amendment. We've talked about this before...

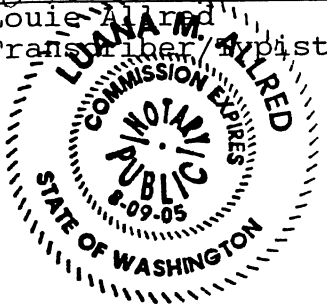
(END OF EXCERPT)

CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF LEWIS)

I, Louie Allred, do hereby certify that the above and foregoing proceeding was tape recorded earlier, and then later reduced to transcription by myself; that the above and foregoing is a true and correct transcript of the proceeding according to what could be heard from the cassette tape.

I do further certify that I am not a relative or employee of, or counsel for any of said parties, or otherwise interested in the event of said proceeding.

Louie Allred 10/17/03
Louie Allred
Transcriber/Typist


APPENDIX 10

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OCT 20 2003

WESTERN WASHINGTON
GROWTH MANAGEMENT HEARING BOARD



TC 10/20/03
Centralia - Chehalis

Chamber of Commerce

500 NW Chamber of Commerce Way
Chehalis, Washington 98532

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OCT 20 2003

PERKINS COIE

RECEIVED

OCT 21 2003

LEWIS CO. PROS. ATTY.

**BEFORE THE WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD**

KNUTSEN, et al.,
Petitioners,
v.
LEWIS COUNTY,
Respondent.

YANISCH, et al.,
Petitioners,
v.
LEWIS COUNTY,
Respondent

PANESKO, et al.,
Petitioners,
v.
LEWIS COUNTY,
Respondent.

BUTLER, et al.,
Petitioners,
v.
LEWIS COUNTY,
Respondent.

No. 03-2-0015

PETITIONERS'

HEARING BRIEF

RE: COMPLIANCE

No. 02-2-0007c

AND MOTION TO

ADD EXHIBIT

No. 00-2-0031c

No. 99-2-0027c

1 Webster, retired WSU Extension Service chair for Lewis County provided a report on
2 the soils suitable for Christmas tree production. **Ex. XII-42 t.** It is also not true that
3 poultry operations can be dispersed throughout rural residential zones. According to
4 the County, poultry have high water requirements. They require waste disposal lands
5 for pollution control. **Ex. XII-42 t, Decl. of Don Stuart.** Odors from poultry
6 operations make such operations incompatible with residential areas and are an
7 important reason to separate them from such areas. **Ex. XII-42 t, p. 5.** None of the
8 above are suited to the frequent flooding inherent in Class B land.

9 The County has not attempted to locate lands having less than \$25,000 gross
10 agricultural product or less than ideal size for the operation. It has not attempted to
11 locate lands meeting its size parameters. It has not considered the agricultural
12 operations that require prime soils outside of flood prone areas. It has merely set aside
13 13,767 acres of Class A and 35,000+ acres of Class B. Class A was designated on the
14 basis of existing water rights coupled with prime soils. Class B was designated on the
15 basis of proximity to a stream, regardless of soil type. The County's attempted
16 justification is clearly erroneous.

17
18 Based on the County memoranda entitled Agriculture in Lewis County, the
19 County, by Resolution 03-368, amended the Agricultural Lands Classifications section
20 of the Comprehensive Plan to add the following language at p.4-56:
21

22 Lands Necessary for Designation as Agricultural Lands of Long-Term
23 Commercial Significance

24 The long terms (sic) needs of Lewis County commercially significant
25 agriculture industry are served by the designation of 40,000 acres or more of
26 lands, including bottom lands and lands with good soils and irrigation.

1 There is no evidence the Planning Commission transmitted any
2 recommendation to amend the Comprehensive Plan to the Board of County
3 Commissioners. **Ex. XII 42 p.**

4 It was not included in the August 8, 2003 letter from the Board of County
5 Commissioners to the Planning Commission requesting consideration of a new
6 recommendation. **Ex. XII 41 g.** There was no notice to the public. The procedure did
7 not follow the requirements of RCW 36.70.360 through .450. It did not follow the
8 requirements of RCW 36.70A.035. As shown, *infra*, lack of notice renders the
9 resolution void.

10 In the event the Hearings Board were to nevertheless consider the merits, the
11 memoranda have been demonstrated above to be clearly erroneous. The 1997 Census
12 showed 117,677 acres farmed in that year. The County all but ignored the capability
13 of the soils because it recites the acreage requirement can be satisfied with bottom
14 lands. Most of the lands designated for Agriculture are Class B that and are based on
15 proximity to a stream and do not consider soil type. The County maintains the
16 requirement lands have both good soils and irrigation applies only to the less than
17 14,000 acres of Class A. The provision does not require the county to maintain and
18 enhance agriculture.

19 The County also enacted Ordinance 1179E containing a new definition: LCC
20 17.10.126. The language of this definition was not before the Planning Commission
21 or the public. The August 12 materials contained the County's unsigned
22 memorandum entitled "Agriculture in Lewis County". That document contained
23 conceptual proposals in general language. The concept only was before the Planning
24 Commission.
25
26

Commission. The Planning Commission signified its acceptance of the concept by checking “yes” on a form that stated:

Recommend adding farm home designation, 5 acres; and

Recommend adding farm center designation on long-term lands.

The recommendations were translated into language that was incorporated at the Board of County Commissioner proceedings into the enactment of LCC

17.10.126(b). The Planning Commission was not presented with an option to approve the concept later contained in Section 17.10.126(a). **Ex. XII-42 p.** As discussed, *infra*, Section 17.10.126(a) having been enacted without notice is void.

Section 17.10.126(a) states:

“Long-term agricultural resource lands” are those lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils.

Should the Hearings Board consider the merits of this provision we note that to be consistent with the newly amended Comprehensive Plan provision, designation may be limited to 40,000 acres regardless of the capability of the soils. The provision rejects the notion that lands primarily devoted to agriculture and having the quality of being commercially significant must be designated as Agricultural Resource Lands. It fails to comply with the definitions “Agricultural land” and “Long-term Commercial Significance” at RCW 36.70A.030(2) and (10) and the duty to designate at RCW 36.70A.170(a).

Section 17.10.126(b) did not conform to the notice provided in “Agriculture in Lewis County”. The proposal at p. 15 suggested that the “farm home” would be a parcel allowed where the designated farm was in excess of 40 acres. The five acre

1 “farm home” would be on a separate tract and zoned 1:5. **Ex. XII-41 h p. 15.** The
2 enactment dropped the 40-acre requirement and left unanswered the status of the
3 zoning.

4 The “farm center” was also to be a tract of up to 5 acres to permit all uses
5 permitted in rural industrial zones, providing the size limits would not apply. It would
6 allow also (a) home based businesses, (b) isolated small business, (c) any resource-
7 related manufacturing, processing, storage, or transportation, (d) rural resort or
8 recreation (related to agritourism), and equestrian facilities and support activities. **Ex.**
9 **XII-41 h.** The enactment merely stated the center would be “available for rural
10 commercial and industrial uses under guidelines established as a conditional use.”

11 The uses to be permitted in “farm center” thus exceed the uses permitted in
12 RDD zones for commercial and industrial and do not have any of the “isolation”
13 requirements contained in those zones. Neither the “farm home” nor the “farm center”
14 assure the allowed activity will not interfere with the continued use of the Resource
15 lands for the production of food or agricultural products. See RCW 36.70A.060(1).
16

17 The County has attempted to undermine the requirements of statute by
18 restrictive definitions of “need”. It has excluded lands used for agriculture on the
19 grounds the specific crops are not “soils dependent” when in fact, such crops are
20 demonstrated to be soils dependent. It relegates agriculture to river bottom lands, even
21 though such lands are not suitable for many upland operations. Its “need” analysis is
22 clearly erroneous.
23

24 We have detailed lack of proper notice for issues presented at the September 8,
25 2003 hearing before the Board of County Commissioners. These include the
26

1 amendments to the Comprehensive Plan and the amendment adding Section 17.10.126
2 as well as the inclusion for designation of the Abplanalp property discussed at length
3 *infra*. Washington Courts have held, at least since 1910 that notice of adoption of an
4 ordinance must comply with the notice requirements of the statute. A failure to
5 comply with those requirements renders the action void. *Savage v. Tacoma*, 61 Wash.
6 1, 117 P. 78 (1910); *Tennent v. Seattle*, 83 Wash 108, 145 P. 83 (1914); *Swartout v.*
7 *Spokane* 21 Wn.App. 665, 673, 586 P.2d 135 (1978). That lack of required notice
8 applies also to zoning actions includes *State ex rel Weiks v. Tumwater* 66 Wn.2d 33,
9 35, 400 P.2d 789 (1965), (failure to properly adopt the map); and *Glaspey & Sons v.*
10 *Conrad* 83 Wn.2d 701, 521 P.2d 934 (1974), (failure to properly state the purpose of
11 the hearing for adoption of zoning amendments).

12
13 The *Glaspey* court provided an illuminating analysis of the problem holding
14 that language of a notice that the public hearing was “for the purpose of discussing the
15 pros and cons of a proposed Zoning Ordinance” was insufficient to apprise the public
16 of new documents presented for public discussion at the beginning of the hearing and
17 held the ordinance void.

18 The Court observed:

19
20 The notice employed by the board accorded plaintiff neither the
21 fundamental fairness nor the procedural due process envisioned by RCW
22 36.70.590 and RCW 36.70.630.

23 It is not enough that the published notice enabled plaintiff to be present
24 at the hearing. As stated above, it was also necessary that the notice have
25 informed plaintiff of the hearing’s purpose so it could intelligently represent
26 itself. However, adequate notice of a public hearing has another, more subtle,
reason that goes beyond merely enabling the opposition to give vent to its
feelings. It is important that a board have an opportunity to reach an
“informed” decision. That reason is thwarted if interested parties are
prevented from presenting their view because of a board’s failure to adequately
disclose the true “purpose of the hearing”. See Motion, *infra*

The County's notice of hearing in this case stated:

The hearing will be for the purpose of taking testimony concerning proposed amendments to the Comprehensive Plan and zoning regulations, designating agricultural land of long-term commercial significance. **Ex. XII-43** _____

The only amendments, the public was apprised of, were contained in the referral by the Board of County Commissioners to the Planning Commission, and presented to the public at a public meeting of the Planning Commission on August 12, 2003 **Ex. XII-41 g, h, i**, and at hearing on August 26, 2003, **Ex XII 42 l**, and the recommendations of the Planning Commission dated August 26, 2003 **Ex XII 42 k, p**. None of these documents contained the language of the adopted resolution or ordinance.

The notice did not comply with the requirements of any notice statute including RCW 36.70A.035(2)(a), which provides:

Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

The proposed change was not within the range of alternatives presented in the EIS promulgated in the March 27, 2002 EIS or the March 5, 2003 DNS. The exceptions contained in the statute therefore did not apply.

Abplanalp

The County's action with respect to Walter Abplanalp illustrates the intent of the County to undermine the requirements of the act on any pretext. Mr Abplanalp

1 had made an application for rezone from agricultural resource land to RDD. The
2 County had declined to entertain any specific application outside of the
3 recommendations made April 24, 2003. His land was not included among the changes
4 recommended by the Planning Commission on August 26, 2003 for consideration on
5 September 8, 2003. He appeared before the Board of County Commissioners on
6 September 8 and asked for a rezone, despite the fact that there was no public notice
7 that his land was being considered for change in designation. The record is clear on
8 that point.

9 By Mr. Johnson: The individual applications for rezones are on agricultural
10 land and forest lands aren't going to be looked at until after the Growth Board
11 decisions. So your application is still there, but it's pending review by the
12 Growth Board. And that will take place at a – later this year. By the County,
excuse me. That will be looked at at a later date. **Ex. XII-43 c transcript p. 2.**

13 He owned a 100-acre parcel acquired from his father and farmed as a dairy. He did
14 not claim insolvency of the dairy. He merely sought consistency with the county's
15 failure to designate as ARL other farmland in the neighborhood.

16 The subject land is at 238 Tucker Road, Ethel. **Ex. XII-43 c transcript p. 3.**
17 The parcel is located in Twp. 12 N., R. 1 W. Had there been notice that this parcel
18 would be considered at hearing we could have advised the Board of County
19 Commissioners of the following: The map shows much of the surrounding lands to be
20 current use classified by the assessor for agriculture and some land in the vicinity
21 classified for forest current use. **Ex. XII-42 t (3).** A view of soils map No. 67 reveals
22 most of the land is composed of soil No. 167 a Prather, Class II prime soil. **Ex. XII-**
23 **36 r.** The soils in much of the surrounding land to the east is of similar type. The
24 parcel is at the western edge of a larger area at Twp. 12, R. 1 W, and extending into R.
25
26

1 E. of contiguous farmland containing mostly 20 and 40-acre or larger parcels that
could and should have been blocked as ARL. The land to the west of the parcel is in
trees. The verbal characterizations by the parties were misleading. **Ex. XII-28 s.**

Yet the County's special counsel recommended the change. Counsel's
recommendation was on several grounds. He said that rezone from ARL should be
considered

"because the designation of long-term commercially significant agriculture is
occurring today"; "number one, the property is currently used as a dairy. And
in your findings, that is smaller than a long-term commercially significant
dairy. Number two, that it's an isolated property surrounded by lands of other
development". **Ex. XII-43 c transcript of excerpts p. 6, 8.**

There was no consideration that the farm or the soils might have capability for
other operations. Staff had not analyzed actual development as opposed to the
surrounding zoning. Many, if not most, of the lands designated for ARL outside of
floodplains are in isolated parcels. The criteria at LCC 17.30.580 were not amended
to permit the change of zoning on the ground of the land being undersized for its
current operation, in this case a dairy. Such an amendment would not have complied
with the requirements of WAC 365-190. Nevertheless, the Board of County
Commissioners granted the change. **Ex. XII-43 b**, transcript, pp. 8-9. The action
must be void because of lack of notice. But even if not void on that ground, it must be
noncompliant and also invalid as substantially interfering with the fulfillment of Goal
8 because there was no showing of any failure to meet the enacted criteria for
designation in the first place.

Napavine to Winlock removals

1 DATED this 19th day of October, 2003.

2
3 Annette H. Yanisch
4 Annette H. Yanisch

Michael T. Vinatieri
Michael T. Vinatieri

5
6 Deanna M. Zieske
7 Deanna M. Zieske

Eugene Butler
Eugene Butler

8
9 Debra Ertel Burris
10 Debra Ertel Burris

Douglas H. Hayden
Douglas H. Hayden

11
12 Tammy Baker
13 Tammy Baker

Daniel A. Smith
Daniel A. Smith

14
15 Edward G. Smethers
16 Edward G. Smethers

Brenda Boardman
Brenda Boardman

17
18 Karen Knutsen
Karen Knutsen

Jane Webster Mooney
for Evaline Community Association
Evaline Community Association

19
20 Dorothy L. Smith
Dorothy L. Smith

21
22 John T. Mudge
23 John T. Mudge

Valerie Gore
Valerie Gore

24
25 Susan Roth
26 Susan Roth

Richard Roth
Richard Roth

APPENDIX 11

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6
7 **BEFORE THE WESTERN WASHINGTON**
8 **GROWTH MANAGEMENT HEARINGS BOARD**

9 KNUTSEN, et al.,
10 v.
11 LEWIS COUNTY,
12
13 Petitioners,
14 Respondent.

No. 03-2-0015

PETITIONERS'
REPLY BRIEF

12 YANISCH, et al.,
13 v.
14 LEWIS COUNTY,
15
16 Petitioners,
17 Respondent

No. 02-2-0007c

16 PANESKO, et al.,
17 v.
18 LEWIS COUNTY,
19
20 Petitioners,
21 Respondent.

No. 00-2-0031c

21 BUTLER, et al.,
22 v.
23 LEWIS COUNTY,
24
25 Petitioners,
26 Respondent.

No. 99-2-0027c

1 The County claims we should have assigned error to the County's findings. There is
2 no actual evidence of adoption of the findings by the Planning Commission. The only
3 evidence in that regard is a motion to allow the chair to sign a letter of transmittal. In
4 any event, the purported findings are merely legislative determinations and do not rise
5 to the status of judicial findings of fact. The only relevance would be in their evidence
6 of legislative intent for the purpose of construction of ambiguous provisions. The
7 intent clearly expressed is one to reject the requirements of statute in favor of
8 designation of an acreage that represents a mere fraction of the land devoted to
9 agriculture in Lewis County. We believe the County has mis-stated the legal duty.
10 The legal duty is to comply with a statute that requires designation of those lands
11 devoted to agriculture that have long-term commercial significance in order to meet
12 the goals of maintaining and enhancing the industry; conserving those lands and
13 discouraging incompatible uses.
14

15 Overview

16 The County set aside a quantum of land it contends will maintain and enhance
17 the agricultural resource industry. The County considers the "maintain and enhance"
18 number of acres to be all that is necessary regardless of whether the land set aside is
19 primarily devoted to agriculture or even whether it possesses optimum productive
20 capacity.
21

22 To justify its actions the County made last minute changes to its
23 Comprehensive Plan and to its Development Regulations. The Comprehensive Plan
24 Amendment (Section B. 4 of Resolution 03-368) states:
25
26

1 The long terms (sic) needs of Lewis County commercially significant
2 agriculture industry are served by the designation of 40,000 acres or more of
3 lands, including bottom lands and lands with good soils and irrigation.

4 The development regulation (Ordinance 1179E adopting definition as
5 17.10.126) states:

6 “Long-term agricultural resource lands” are those lands necessary to
7 support the current and future needs of the agricultural industry in Lewis
8 County, based upon the nature and future of the industry as an economic
9 activity and not on the mere presence of good soils.

10 In so doing, the County has rejected the mandate of RCW 36.70A.020(8)
11 establishing goals of the Act; .030(2) defining “agricultural land”; .030(10) defining
12 “Long-term commercial significance”; .170 requiring designation of agricultural
13 resource lands; and .060 requiring conservation of such lands as well as WAC 365-
14 195-050 regulating classification of agricultural resource lands.

15 The County attempted to justify its actions on the basis of two memoranda, one
16 circulated to the public on August 12, 2003 and the other on August 26, 2003. Neither
17 memorandum was signed leaving authorship unknown and except for references to the
18 1997 Census data there are no references to published data or research to back up its
19 assumptions and conclusions. These memoranda postulated a “need” in Lewis County
20 of approximately 40,000 acres, a number less than the number of acres designated for
21 agricultural resource purposes in 1996. The memoranda had substantial problems and
22 many assertions were demonstrably wrong. It asserted gross income of less than
23 \$25,000 constituted a “hobby farm” and based its net income assumptions on premises
24 not of record and that were not consistent with data that was of record. It implied only
25 the largest farms met the criteria. Unfortunately none of the data was or could be tied
26 to individual farm holdings. It also asserted that hay and Christmas trees were not soil

1 and trees should be the determining factor here, not the suitability of the current
2 operation. See Bainbridge Ex. XII-28 q, p. 10.) However, there was no testimony the
3 business was currently unsuccessful. A full examination of the map shows this land is
4 at the edge of a large area devoted to agriculture that contains prime soils. That
5 analysis was not presented, because there was no staff report.

6 **Notice Issues:**

7 There was no notice for the enactment of Resolution 03-368 section B 4 or of
8 Ordinance 1179 E insofar as it enacted Section 17.10.126(a). Notice for Section
9 17.10.126(b) was defective. The provision proposed was not the provision enacted as
10 17.10.126(b). There was no notice for the zoning of the Abplanalp property.

11 The County takes the position that the Hearing Board lacks jurisdiction to act
12 upon the notice provisions contained in RCW 36.70. We believe notice provisions are
13 jurisdictional and the failure to comply results in a void act. We question how a
14 hearings board could be compelled to act on a provision that would necessarily be
15 overturned in Superior Court.

16 However, we also cited RCW 36.70A.035.

17 RCW 36.70A.035(1):

18 The public participation requirements of this chapter shall include
19 notice procedures that are reasonably calculated to provide notice to property
20 owners and other affected and interested individuals, tribes, government
21 agencies, businesses, and organizations of proposed amendments to
22 comprehensive plans and development regulation. (Emphasis added)

23 No notice of the proposed amendments was provided. The closest to notice of
24 any of the provisions was a conceptual act of the Planning Commission that a
25 provision for a farm home designation and a farm center designation could be added.
26

1 Even those were changed from the August 12 proposal. (Should the Hearings Board
2 rule that a general notice for rezone would apply to Abplanalp, it is still a change from
3 any prior recommendation.) The change procedures under RCW 36.70A.035(2)(a)
4 requiring for opportunity for review and comment prior to a vote by the Board of
5 County Commissioners on the changes were not followed. See Petitioners Br. pp. 18-
6 23.

7 **Napavine to Winlock Removals**

8 The County claims that the removal of the parcels between Napavine and
9 Winlock are justified because they are “isolated” and because they might have better
10 uses for them. They now say they withdrew their claim about the property being for
11 future urban growth (they do not cite to the record for this proposition). Petitioners
12 objections to the County’s actions have been that there are continuous areas of lands
13 devoted to agriculture in the Napavine—Winlock area and that those areas should be
14 designated ARL. Petitioners cite to approximately 15,000 to 20,000 acres of lands
15 devoted to agriculture with prime agricultural soils in the Napavine—Winlock area
16 that should be designated ARL. Ex. XII-43 g, p. 12. The subdivision referred to by
17 the County appears to be an assessor’s segregation and not a true subdivision. See.
18 Ex. 28 s Twp. 12 N., R. 2 W. The Mikkelson property has prime soils and there is
19 substantial agriculture in the vicinity. The Carlson Property would require a
20 Comprehensive Plan change to Major Industrial to qualify for the County’s claim (not
21 in this record) that it may seek rezone for a glass plant purchaser. The County’s
22 claimed “isolation” came about because the County did not do a proper job in the first
23 place and that is what the petitioners are attempting to correct.
24
25
26

Dated this 1st day of December, 2003.

Edward G. Smethers
Edward G. Smethers

Out of State E.B.
Susan Roth

Karen Knutsen
Karen Knutsen

Michael T. Vinatieri
Michael T. Vinatieri

Douglas H. Hayden
Douglas H. Hayden

Annette H. Yanisch
Annette H. Yanisch

Eugene Butler
Eugene Butler

Debra Ertel Burris
Debra Ertel Burris

Out of State E.B.
Richard Roth

Dorothy Smith
Dorothy Smith

Brenda Boardman
Brenda Boardman

John T. Mudge
John T. Mudge

Evaline Community Assoc.
Evaline Community Association

Valerie Gore
Valerie Gore

Deanna M. Zieske
Deanna M. Zieske

Tammy Baker
Tammy Baker

Daniel A. Smith
Daniel A. Smith

APPENDIX 12

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BEFORE THE WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

VINATIERI, SMETHERS AND KNUTSEN, et al.,
Petitioners,
v.
LEWIS COUNTY,
Respondent.

No. 03-2-0020c

PETITIONERS
BRIEF—VINATIERI
ISSUES

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**BEFORE THE WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD**

VINATIERI, SMETHERS AND KNUTSEN, et al.,
Petitioners,
v.
LEWIS COUNTY,
Respondent.

No. 03-2-0020c

**PETITIONERS
BRIEF—VINATIERI
ISSUES**

Issue 1: Whether notice of hearing for adoption of Resolution 03-368 and Ordinance 1179 E contained sufficient detail to inform the public the County was considering Section B.4 of Resolution 03-368 and Section 2 of Ordinance 1179E to be codified as LCC 17.10.126 and therefore lacked jurisdiction to consider the above sections and/or failed to comply with RCW 36.70A.035(2)(a).

The County's actions on September 8, 2003 included an amendment to the Comprehensive plan to establish that 40,000 acres was sufficient land to designate Agricultural Resource Lands. It also established a new definition of agricultural lands and a definition of "farm home" and "farm center".

The County had not made a prior proposal to amend the Comprehensive Plan to establish the number of acres required for Agricultural Resource uses. There was also no prior proposal to redefine agricultural lands. The County had provided a conceptual framework for "farm home" and "farm center" in a memorandum circulated to the public on August 12, 2003. Ex. XII-41 h, p. 15. The Planning Commission did not approve any specific language, but merely checked yes to the questions "Recommend adding farm home designation, 5 acres" and Recommend adding farm center designation on long-term lands". Ex. XII-42 m p. 7. The language of the proposed enactment was never circulated to the public and the enactment on

1 September 8, 2003 differed materially from the conceptual framework submitted by
2 memorandum.

3 The August 12, 2003 proposal required a parcel with a minimum size of 40
4 acres for the farm home. This requirement was not contained in the enacted
5 ordinance. The proposal also provided commercial/industrial activities could be
6 conducted at RAI LAMIRD intensity. The enactment is unclear.

7 RCW 36.70A.035(1) requires the public participation requirements to include
8 notice procedures reasonably calculated to provide notice to property owners; other
9 affected and interested individuals and others of the proposed amendments to
10 comprehensive plans and development regulations.

11 RCW 36.70A.035(2)(a) requires that for any change proposed after the
12 opportunity for review and comment has passed an opportunity for review and
13 comment on the proposed change shall be provided before the local legislative body
14 votes on the proposed change.

15 The county did not comply with either provision. It also did not comply with
16 the requirements of RCW 36.70.360, and .450. The County's notice provided only:

17 The hearing will be for the purpose of taking testimony concerning proposed
18 amendments to the Comprehensive Plan and zoning regulations, designating
19 agricultural land of long-term commercial significance. Ex. XII-146.

20 Washington Courts have held at least since 1910 that notice of adoption of an
21 ordinance must comply with the notice requirements of the statute. *Savage v. Tacoma*,
22 61 Wash. 1, 117 P. 78 (1910); *Tennent v. Seattle*, 83 Wash. 108, 145 P. 83 (1914);
23 *Swartout v. Spokane* 21 Wn.App. 665, 673, 586 P.2d 135 (1978). Notice requirements
24
25
26

1 apply to zoning actions. *State ex rel Weiks v. Tumwater* 66 Wn.2d 33, 35, 400 P.2d
2 789 (1965) and *Glaspey & Sons v. Conrad* 83 Wn.2d 701, 521 P.2d 934(1974).

3 Failure to comply with notice requirements has uniformly rendered the action
4 void. The *Glaspey* Court held that adequate notice was required for the dual purpose
5 of permitting plaintiffs to intelligently represent themselves and of affording the Board
6 of County Commissioners an opportunity to reach an “informed” decision. The reason
7 for notice is thwarted if interested parties are prevented from presenting their view
8 because of a board’s failure to adequately disclose the true “purpose of the hearing”.

9 The county’s notice did not recite any proposal to amend the Comprehensive
10 Plan text. No proposal was recited to define “Long-term agricultural resource lands”.
11 The published notice did not apprise the public of the specific matters considered on
12 August 12 and August 26, 2003. Only persons who attended those meetings had
13 notice of any proposal to define “farm home” and “farm center”. The enacted
14 language contained provisions materially different from the proposal. The Board of
15 County Commissioners did not grant any continuance on September 8, 2003 to afford
16 an opportunity for review and comment prior to their vote on the changes first made
17 that day. The enactment did not comply with any part of RCW 36.70A.035 and is
18 therefore void.
19
20

21 **Issue 2. Whether Section B 4 of Resolution 03-368 containing a**
22 **determination that the long-term needs of Lewis County for long-term**
23 **commercially significant agriculture is 40,000 acres fails to comply with**
24 **RCW 36.70A.170(1)(a) requiring designation of agricultural lands that**
have a long-term significance for the commercial production of food or
other agricultural products.

25 The County has not denied that 140,645 acres of land are devoted to
26 agriculture or that 117,677 acres of land were farmed in 1997.